DOCUMENT RESUME

ED 362 987 EA 025 358

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TITLE	Impact Aid and the Establishment of United States Department of Defense Schools in Hawaii.
INSTITUTION	Hawaii State Legislative Reference Bureau, Honolulu.
REPORT NO	LRB-4
PUB DATE	93
NOTE	190p.
PUB TYPE	Reports - Evaluative/Feasibility (142)
EDRS PRICE	MF01/PC08 Plus Postage.
DESCRIPTORS	*Educational Quality; Elementary Secondary Education; *Federal Aid; Federal Government; Federal State Relationship; Governance; *Government School Relationship; Public Schools; *School District Reorganization; State Departments of Education; *State Federal Aid
IDENTIFIERS	*Dependents Schools

ABSTRACT

Findings of a study that examined the feasibility of transferring certain public schools in Hawaii to the U.S. Department of Defense (DOD) are presented in this document. A state legislative resolution to transfer was adopted in response to two concerns--the dissatisfaction of some military families with the quality of public schools on Oahu, and the federal funding (impact aid) that is received by the State Department of Education (SDE) to finance the education of military family members. Conclusions are that: (1) the ED should work closely with state congressional representatives to ensure the reauthorization of the program in a manner that will be most beneficial to Hawaii; (2) the state legislature should not take any direct action at this time to try to force the transfer of any of Hawaii's public schools from the administrative and managerial control of the SDE to the U.S. Department of Education; (3) a possible action would be to modify the boundaries of the Honolulu departmental school district; and (4) parental dissatisfaction with educational quality is an insufficient reason to transfer control of some of the schools from the SDE to the DOD. The SDE and military authorities must cooperate to increase parental involvement in the public school system. Thirteen tables are included. Appendices contain relevant state legislation and testimony and information on impact aid. (LMI)

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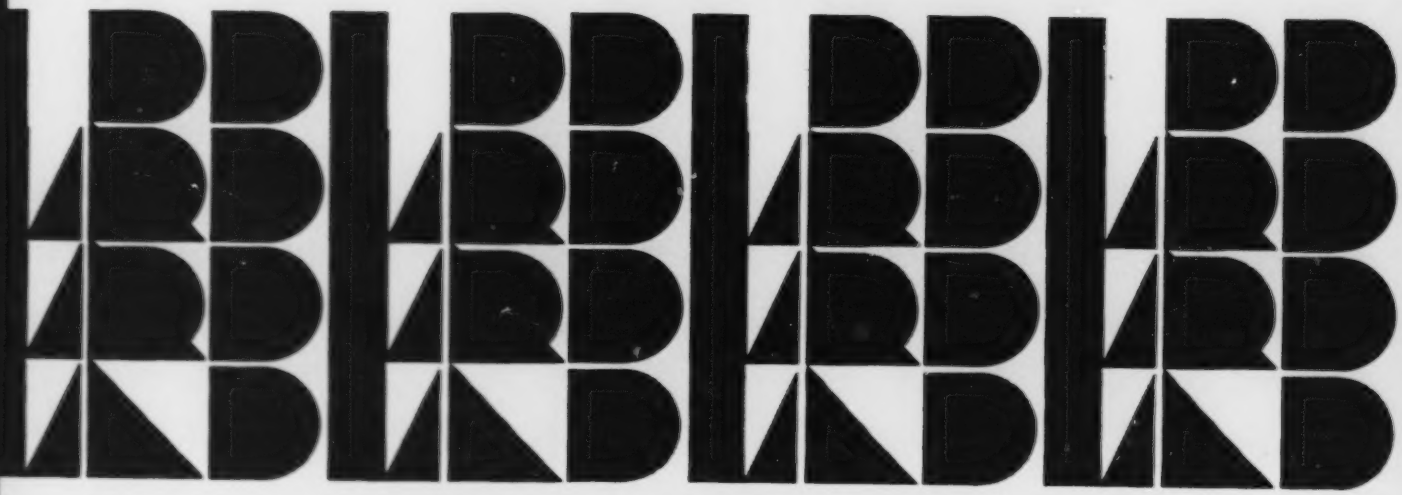

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Impact Aid and the Establishment of United States Department of Defense Schools in Hawaii

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Report No. 4, 1993

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FOREWORD

This study would not have been possible without the cooperation and assistance of many people. The Bureau would like to thank the staff of the Department of Education of the State of Hawaii, especially Art Kaneshiro, Don Kanagawa, and Rosalind Sueyoshi. Appreciation is also extended to the staff of the office of Senator Daniel Inouye, and to the National Association of Federally Impacted Schools (NAFIS).

Samuel B. K. Chang
Director

January 1993

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Chapter 1

INTRODUCTION

House Resolution No. 223, H.D. 2, entitled "Requesting the Legislative Reference Bureau, with the Assistance of the Department of Education, to Study the Feasibility of Transferring Certain Public Schools to the United States Department of Defense Pursuant to Public Law 81-874," was adopted by the House of Representatives of the State of Hawaii during the 1992 Regular Session. (See Appendix A.)

The Resolution was adopted in response to two major concerns:

(1) The dissatisfaction of some military families with the curriculum, educational services, and general quality of the public schools on Oahu that are attended by their children; and

(2) The federal funding, known as impact aid, that is received by the state Department of Education to finance the education of military family members.

This report has been prepared in response to the House Resolution.

This chapter introduces the study. Chapter 2 examines the basic premise behind impact aid and how that premise applies to the State of Hawaii. It describes the distinctions that the federal government makes among federally-connected students and how the aid is allocated to the states. The chapter concludes by looking at future funding allocations for 1993.

Chapter 3 focuses on the "Section 6" stateside school system that is financed and managed by the United States Department of Defense (DOD). It examines the size and location of the schools in addition to congressional efforts to eliminate the system.

Chapter 4 focuses on the school funding situation in Hawaii with respect to impact aid. It examines the amounts of impact aid received over the years, how impact aid is utilized by the state Department of Education (DOE), which of public schools on Oahu have military family members, and related issues. This chapter also includes some of the military parents' views of the DOD Section 6 schools and the issue of school choice in Hawaii.

Chapter 5 discusses the feasibility of transferring control of some of the public schools on Oahu from the state DOE to the United States DOD. The Illinois case is discussed in addition to potential legal issues that could arise from the transfer.

Chapter 6 sets forth findings and recommendations.

Chapter 2

IMPACT AID

Introduction

During World War II, there was a substantial increase in military activities in many areas of the United States. The federal government recognized that all of its projects were having a negative effect on the revenue bases of the communities where its military establishments were located. Ad hoc appropriations were made by Congress to assist some school districts. In 1950, the Impact Aid Program was enacted to establish official federal policy for such assistance.[1] See Appendix B for the text of Public Law 81-874 and Appendix C for the amended United States Code.

The Purpose of Impact Aid

The presence of a federal activity in a community will often result in the loss of funds to that particular community. The community may also incur added expenditures in the construction of infrastructure and provision of basic services necessary to the military establishment. Impact aid is an attempt, by the federal government, to pay back the community the funds it has removed by virtue of the fact that it has some activity going on there.

For example, most American school districts run on three basic sources of revenue: local, state, and federal funds. In most states, property taxes finance public education. When citizens pay their property tax each year, part of the money goes to the local government which, in turn, uses it to finance the local school district under its jurisdiction.[2]

However, the presence of a large federal activity, such as a military base (in this study, the term "base" will also include Army "posts"), can alter the financial situation quite a bit. The military personnel may reside in base housing--thereby paying no property taxes--and yet, send their children to the local public school system. The children are educated at public expense yet their parents pay no property taxes to the local government. Hence, the education of these children is being subsidized by the rest of the community--the people who own their own homes and pay property taxes every year. The federal government attempts to replace this loss of funds by providing the local government with impact aid.[3]

Impact Aid and Hawaii

Hawaii, however, is unique in that it has a single statewide school system. Property taxes finance the county governments but the public school system is the responsibility of the state government. Funds for the state government are obtained through taxes such as the

state income tax and the general excise tax. The existence of several large military installations in the Leeward, Central, and Windward departmental school districts of the state Department of Education (DOE) have resulted in the presence of approximately 60,000 active-duty military personnel in addition to their 61,000 family members.[4]

Many of these military personnel and their families are residents of other states and, hence, do not pay Hawaii state taxes. A portion of the Soldiers' and Sailors' Civil Relief Act[5] allows military personnel who are in compliance with military or naval orders to maintain their residence in any state despite their absence from that state. Hence, they do not pay the Hawaii state income tax and many do much of their shopping on the bases at the exchanges, commissaries, and other facilities and, to that extent, are also exempt from the state general excise and fuel taxes. Retired military personnel living in Hawaii are exempt from paying state taxes on their military pensions.[6]

Impact aid is essentially an attempt by the federal government to reimburse the states for the loss of some of their tax base through the military presence.

The Federally-Connected Student

There are two types of federally-connected children. A type "A" child is a child whose parents both work and reside on a federal property. These parents usually pay no local or state taxes so there is a high degree of impact on the revenues of a school district. Type "B" children are those whose parents either live or work on federal property. For instance, the father of a "B" child may work on a military installation but the family may reside off the base in their own home. The family pays property tax resulting in less impact (as compared to a type "A" child) on the local funding structure.[7] Within the "A" and "B" groups, there are several subgroups such as handicapped students, children of military personnel, children of civilians, children living on Indian lands, and children who reside in low-rent federal housing projects.[8] The specific types of subgroups present affect the amounts of impact aid that are allocated to the states.

Public Law 81-874[9] defines federal property as real property that is owned or leased by the United States. This includes real property held in trust for individual Native Americans or Native American tribes. However, the term "federal property" does not include "any real property used by the United States primarily for the provision of services to the local area in which such property is situated."[10] Hence, the children of workers in Honolulu's Prince Kuhio Federal Building would not be considered federally-connected children.

The Federally-Impacted School District

The United States Department of Education identifies a school district by how many "A" and "B" students it has. A "super A" district is a district with at least twenty percent of its student population consisting of "A" students. A "sub-super A" district contains between fifteen percent and twenty percent of "A" students while a "regular A" district contains less than fifteen percent of "A" students.

There are only two categories of school districts with "B" students: "super B" is a district with twenty percent or more of the students in the "B" category and "regular B" is a district where "B" students make up less than twenty percent of the school population.[11]

School districts are identified in this way in order to determine the allocation of available funds. A "super A" district is supposed to have more impact on a revenue base than a "sub-super A" or "regular A" district because the "super A" district educates more federally-connected "A" students than the other districts.

How Impact Aid is Allocated to the States

The amount of federal impact aid that a state receives is based on four factors:

(1) The number of children in each group and subgroup.

(2) The local contribution rate of that particular state (the actual per pupil cost paid by the state).

(3) The total amount appropriated for the Impact Aid Program by the Congress.

(4) The distribution formula specified in the Impact Aid Law.[12]

See Appendix D for a more detailed examination of the formula used to determine payments.

Because federal impact aid is disbursed and administered to the local school districts by the United States Department of Education on a per child basis, military parents are asked at least once a year to fill out a form for each child in the school system.[13] The school districts use this information to apply for impact aid. Nearly every congressional district receives some amount of impact aid.

Future Funding of Impact Aid

Impact aid has not been funded at full entitlement for several years. Funding for the program has diminished significantly due to the demands of other high-profile educational programs that have eaten into congressional allocations. Pressures to reduce the annual deficit and the national debt have also led to reduced appropriations over the past few years. Table 2-1 illustrates the greatly reduced congressional appropriations for the Impact Aid Program for the fiscal year 1992-1993. Table 2-2 shows that most states, not just Hawaii, will be receiving even less impact aid in 1993 than they have received in the past.

Table 2-1

Impact Aid
Budget Authority by Activity

	1991	1992 Appropriation	1992 Revised	1993
1. Maintenance and operations:				
(a) Payments for "a" children	$578,532,000	$588,540,000	$570,540,000	$489,540,000
(b) Payments for "b" children	121,624,000	136,626,000	124,626,000	0
(c) Payments for Federal property	16,590,000	16,590,000	16,590,000	16,590,000
(d) Payments for section 3(d)(2)(B)	22,000,000	---	30,000,000	16,000,000
(e) Payments for decreases in Federal activities	1,952,000	1,952,000	1,952,000	0
Subtotal	740,698,000	743,708,000	743,708,000	522,130,000
2. Disaster assistance	13,663,000	0	0	0
3. Construction	26,349,000	28,000,000	28,000,000	10,000,000
Total	780,710,000	771,708,000	771,708,000	532,130,000

NOTE--Amounts in the 1992 appropriation column are the actual appropriations to this account. All other columns are comparable to 1993.

Explanations of 1992 Revisions

1. Payments for "a" children and "b" children are reduced to display separately the estimated amount required for section 3(d)(2)(B). Actual amounts used for 3(d)(2)(B) and consequently for 3(a) and 3(b) payments in 1991 and 1992 will differ.

Source: U.S. Department of Education, Justifications of Appropriation Estimates to the Congress: Fiscal Year 1993 (Washington, 1992), p. B-12.

Table 2-2

Impact Aid
Maintenance and Operations - Section 3, Public Law 81-874[a]

State or Outlying Area	1991	1992	1993
Alabama	$ 5,118,920	$ 5,082,438	$ 643,209
Alaska	54,275,563	53,888,742	42,237,160
Arizona	65,074,992	64,611,204	62,600,317
Arkansas	2,320,446	2,303,908	1,834,286
California	66,157,986	65,686,479	54,672,022
Colorado	8,171,170	8,112,934	4,707,600
Connecticut	8,306,967	8,247,763	7,332,348
Delaware	63,509	63,056	0
Florida	14,540,089	14,436,462	6,902,721
Georgia	6,750,942	6,702,828	1,132,917
Hawaii	21,734,926	21,580,022	20,980,939
Idaho	4,872,853	4,838,124	3,239,922
Illinois	10,231,853	10,158,931	8,786,691
Indiana	1,995,735	1,981,511	1,400,895
Iowa	290,832	288,759	174,569
Kansas	9,711,162	9,641,951	9,207,346
Kentucky	1,225,578	1,216,843	0
Louisiana	7,726,628	7,671,560	4,483,183
Maine	3,251,430	3,228,257	3,131,421
Maryland	10,852,032	10,774,690	5,948,409
Massachusetts	5,390,808	5,352,388	4,487,708
Michigan	7,545,739	7,491,961	6,735,090
Minnesota	5,525,692	5,486,310	4,799,000
Mississippi	4,006,409	3,977,855	2,558,796
Missouri	5,996,749	5,954,010	5,472,957
Montana	21,494,002	21,340,815	17,099,219
Nebraska	8,374,554	8,314,869	6,470,706
Nevada	3,694,604	3,668,273	1,665,970
New Hampshire	55,413	55,018	23,734
New Jersey	12,149,213	12,062,626	13,883,800
New Mexico	38,550,579	38,275,830	39,049,938
New York	19,472,171	19,333,393	13,645,990
North Carolina	9,043,004	8,978,555	2,613,927
North Dakota	11,795,891	11,711,822	10,139,337
Ohio	4,727,420	4,693,728	2,596,712

State or Outlying Area	1991	1992	1993
Oklahoma	$ 24,140,799	$ 23,968,748	$ 18,415,104
Oregon	3,684,169	3,657,912	3,101,698
Pennsylvania	3,500,542	3,475,594	360,681
Rhode Island	3,354,449	3,330,542	3,211,529
South Carolina	7,193,036	7,141,771	3,235,575
South Dakota	15,004,145	14,897,211	14,504,887
Tennessee	3,425,536	3,401,122	406,374
Texas	28,176,178	27,975,367	21,159,540
Utah	8,260,197	8,201,327	4,993,279
Vermont	17,577	17,452	0
Virginia	36,948,558	36,685,226	18,480,270
Washington	26,836,305	26,645,043	19,775,161
West Virginia	82,139	81,554	0
Wisconsin	6,764,671	6,716,459	6,203,604
Wyoming	7,937,453	7,880,883	4,049,948
DC	1,465,979	1,455,531	983,511
Puerto Rico	1,147,810	1,139,630	0
Guam	0	0	0
Virgin Islands	612,512	608,147	0
Undistributed	61,108,084	60,672,566	0
TOTAL	$700,156,000	$695,166,000	$489,540,000

[a]Excludes in each year amounts available for section 3(d)(2)(B), which remain undistributed until the year following the year for which they are intended. Amounts distributed for 1991 and 1992 include payments for both "a" and "b" children. The 1993 request is for payments for "a" children only. (The 1991 distribution reflects actual payments as of July 30, 1991. Projections for 1992 and 1993 are estimates.)

For 1991 and 1992, funds are distributed based on the formula in the authorizing statute, which considers the numbers of federally connected students in average daily attendance in an LEA, the proportion of all students in the LEA that are federally connected, and the national and State average per pupil expenditure from two years preceding. For 1993, funds are distributed based on revisions to the statutory formula as contained in the proposed appropriations language and described in the budget proposal.

Source: U.S. Department of Education, Justifications of Appropriation Estimates to the Congress: Fiscal Year 1993 (Washington, 1992), pp. B-32-33.

Reduction of Type "B" Payments

While there is widespread agreement that type "A" students--those whose parents live and work on federal property--represent a substantial burden to school districts thereby justifying impact aid payments, type "B" students are more problematic. The Bush administration has proposed reducing or eliminating payments for type "B" students--those whose parents either live or work on federal property.

> Some argue that continued 3(b) payments provide unnecessary subsidies to local education agencies for children who are only a "marginal" burden, as opposed to 3(a) children who generate no local property tax revenues for school purposes. These opponents of 3(b) payments point out that the parents of 3(b) children live or work on private property that generates local property tax revenues for the school district.
>
> Supporters of 3(b) payments argue that the Federal Government, because its property is exempt from State and local taxation, has a responsibility to pay its share of the costs of educating federally connected children. Moreover, they stress that some school districts, especially those in close proximity to Federal military installations, enroll large numbers of 3(b) students, many of whom live on property generating minimal tax revenues.[14]

See Appendix E for a more detailed examination of the budget proposal to eliminate future "B" payments.

Reauthorization of the Impact Aid Program

In the past, Congress has reauthorized the Impact Aid Program on a five-year schedule. The current five-year schedule is ending and the law that authorizes the program is expiring in 1993.[15] The expiration of the current law provides Congress with four options: (1) the date of the current law may be extended and the program will remain as it is, (2) the program can be modified by Congress, (3) the program can be entirely rewritten by Congress, or (4) the program can be eliminated through the refusal of Congress to reauthorize it.[16]

The current budget crunch means that Congress will be carefully scrutinizing all programs that are up for reauthorization. The current Impact Aid Program, justified five years ago, may be harder to justify in its present form to congressional budget cutters in 1993. Hence, modifications to the program may take place. One proposal suggests the elimination of all type "A" and "B" categories of federally-connected students. Instead, payments would be made to the states according to the number of students in each state who are considered to be federally-connected.[17]

Summary

The Impact Aid Program was established in 1950 as a means for the federal government to reimburse communities for the loss of funds and increased expenditures that resulted from the presence of federal activities in those communities. For instance, the military personnel stationed on a large military base may reside in base housing--thereby paying no property taxes--and yet, send their children to the local public schools. The federal government attempts to replace this loss of funds by providing the states with impact aid.

There are two types of federally-connected children. Type "A" children are children whose parents work and reside on federal property. Type "B" children are children whose parents either live or work on federal property. School districts are classified according to how many "A" and "B" students the district has.

Impact aid payments are allocated to a state using a formula based on four factors: The number of children in each "A" and "B" group, the local contribution rate of the State, the total amount appropriated by the Congress for the Impact Aid Program, and the distribution formula specified in the Impact Aid Law.

Impact aid has not been funded at full entitlement for several years. Congressional appropriations for the Impact Aid Program have been greatly reduced for the fiscal year 1992-1993. The Bush administration has proposed the reduction or elimination of payments for type "B" students who are considered to have less of an impact on a community's tax base.

The law that authorizes the Impact Aid Program is expiring in 1992. The current budget situation means that congressional budget cutters will examine the program closely before reauthorizing it. Congress may choose to reauthorize the program in its present form, modify it, or eliminate it altogether.

ENDNOTES

1. U.S., Congressional Research Service, CRS Report for Congress, The Impact Aid Program Under Section 3 of Public Law 81-874, The Library of Congress, January 25, 1991, p. 2.

2. The National Association of Federally Impacted Schools, The Impact Aid Blue Book: 1991-1992 Edition (Washington, D.C.: 1991), p. 17.

3. Ibid., pp. 17-18.

4. Hawaii, Department of Education, Focus: Statistical Information, Economic Impact and Military Contributions to Hawaii, Military Liaison Resource Teacher, June 1990, p. 2.

5. 50 U.S.C.A. 574 (1981).

6. Hawaii Rev. Stat., sec. 235-7(a)(2) and (3).

7. Impact Aid Blue Book, pp. 18-19.

8. Hawaii, Department of Education, Federal Impact Aid (Honolulu: 1992), p. 1.

9. Pub. L. No. 874, 81st Cong., 2nd Sess., sec. 9 (September 30, 1950).

10. Ibid.

11. Impact Aid Blue Book, p. 19.

12. Hawaii, DOE, Federal Impact Aid, p. 2.

13. Army Times, April 6, 1992, p. 41.

14. CRS Report for Congress, p. 15.

15. 20 U.S.C.A. 236.

16. Telephone interview with Cathy Schagh, United States Department of Education, Impact Aid Division, Washington, D.C., December 30, 1992.

17. Telephone interview with John Forkenbrok, National Association of Federally Impacted Schools (NAFIS), Washington, D.C., December 2, 1992.

Chapter 3

DEPARTMENT OF DEFENSE SECTION 6 SCHOOLS

Background

In 1950, the United States Congress enacted Public Law 81-874 to consolidate programs providing federal aid to local public school districts affected by the presence of federal activities. Commonly referred to as impact aid, Public Law 874 authorizes the United States Department of Education to provide maintenance and operations funds to school districts to supplement local revenues for the cost of providing school services to federally-connected children.[1]

The Impact Aid Statutes

There are two major impact aid statutes that relate to the education of military family members. The following is a general description of these two provisions as amended in the United States Code:

> **Section 3.** Payments to local educational agencies to compensate for the loss in tax revenues due to the presence of tax-exempt Federal property and increased enrollments due to Federal activities. [U.S. DOE] administers these payments. [Hawaii's schools with federally-connected students fall into this category.]
>
> **Section 6.** Arrangements as may be necessary to provide for a free public education when: 1) no tax revenues of the State or any political subdivision thereof may be expended for the free public education of children residing on Federal property; or 2) no local educational agency is able to provide suitable free public education for those children. Section 6 arrangements can take two forms: 1) schools directly operated by DOD [Department of Defense], or 2) payments to school districts through DOD contracts for some portion or all of the cost of educating Federal dependents.[2]

The Creation of Section 6 Schools

Although the United States Department of Defense (DOD) operates dependent schools for the military and civilian family members of personnel stationed in overseas countries, federal laws generally leave the education of military family members stationed in the United States to the local educational agencies. The United States Code, as described above, creates Section 6 schools only when no local educational agency can provide a suitable free

public education.[3] Hence, children residing on federal property would attend schools controlled and operated by local public school systems in accordance with state laws and standards. If these children could not attend a locally controlled school off the federal property and it became necessary to operate a school on federal property, then efforts were made to have that school operated by local educational agencies. In return, the agencies would receive federal assistance in the form of impact aid.

Locations of Section 6 Schools

In certain areas of the United States and Puerto Rico, local educational agencies have not been able to provide a free public education in the past. In reference to Section 6 of P.L. 81-874, these schools run by the United States DOD are known as "Section 6 schools." There are currently eighteen Section 6 school systems that encompass sixty-eight schools and had a total enrollment of 32,478 students in 1991.[4]

Federal Installations with Section 6 Schools:

Alabama	Fort McClellan, Fort Rucker, and Maxwell Air Force Base
Georgia	Fort Benning, Fort Stewart, and Robins Air Force Base
Kentucky	Fort Campbell and Fort Knox
Louisiana	England Air Force Base
New York	West Point United States Military Academy
North Carolina	Fort Bragg and Lejeune Marine Corps Base
South Carolina	Fort Jackson, Laurel Bay Marine Corps Air Station and Myrtle Beach Air Force Base
Virginia	Quantico Marine Corps Base and Dahlgren Naval Surface Weapons Command
Puerto Rico	Consolidated at Roosevelt Roads Naval Station[5]

Management and Funding

"The Section 6 Schools Office is managed by the Superintendent, DOD Stateside Dependents Schools established as a separate office under the Director of Education within the Office of the Deputy Assistant Secretary of Defense for Personnel Support, Families and

Education."[6] When the Section 6 schools were first established, funding was provided by the United States Department of Education which still currently funds and administers the Impact Aid Program. However, the Omnibus Budget Reconciliation Act of 1981 suspended the United States Department of Education's authority to fund Section 6 schools and transferred that authority to the DOD.[7] "The Fiscal Year 1992 Operation and Maintenance budget for the school systems is $185 million, averages $5,688 per pupil cost, and has an average teacher salary of $34,000. The salaries are locally determined. There are approximately 5,500 employees in the Section 6 schools."[8]

The Department of Defense Dependents Schools (DODDS)

The Section 6 schools created by Public Law 81-874 are completely independent of the overseas Department of Defense Dependents Schools (DODDS). The DODDS system is located overseas in countries with a large United States military population such as Germany. The Section 6 schools are located in the United States and Puerto Rico. Although both systems are funded and managed by the DOD, the two school systems have completely separate administrative systems. The Section 6 stateside schools are run by Dr. Hector Navarez while the DODDS overseas are managed by Assistant Secretary of Defense Millicent Woods. Educational standards are also determined independently by each system.[9] The DODDS system sets it own educational standards while the Section 6 stateside schools must adhere to the laws that require local comparability to serve as its educational standards.

Section 6 Schools and Local Comparability

Public Law 81-874 requires that the Section 6 schools provide an education comparable to the local school system within the state that it is located. Each Section 6 school system must also have a locally elected school board which has control of school expenditures and operations.[10] Hence, the curriculum and budget of each Section 6 school is based on comparability. ". . . the curriculum of each Section 6 School system is based on the curriculum used by comparable school districts in the State and the budget of each Section 6 School system is based on per pupil costs of comparable school districts in the State."[11] The federal law states that, "For the purpose of providing such comparable education, personnel may be employed and the compensation, tenure, leave, hours of work, and other incidents of the employment relationship may be fixed without regard to the Civil Service Act and rules . . . ."[12]

Some military parents, who are dissatisfied with the quality of educational services that their children are receiving in Hawaii's public schools, frequently argue that their children would get a better education in a Section 6 school. These parents often cite their children's positive past experiences in the Section 6 schools located on the mainland. (See the section entitled "The Issue of School Choice" in Chapter 4 of this study for more discussion of this

viewpoint.) These parents believe that their children would receive a better education if a Section 6 school were established on Oahu.

However, the laws state clearly that all Section 6 schools are established on the basis of state comparability. In other words, the Section 6 school will provide an education that is comparable to the local school system of the state in which it is located. So any Section 6 school established in Hawaii will be of comparable quality to Hawaii's public schools. Instructional services, teacher's salaries, curriculum, and other factors will be of comparable quality to the public schools where these parents are now educating their children. Hence, providing the children of military personnel with a better education than that which is already provided by the State of Hawaii does not appear to be a sound motivation for establishing a Section 6 school in Hawaii.

Schools with Section 6 Arrangements

A few states and territories have Section 6 arrangements with the DOD. These arrangements are defined by the impact aid laws[13] and take the form of some financial arrangement in which the DOD pays for the education of federally-connected students in particular schools. A Section 6 arrangement is determined by the discretion of the Secretary of the DOD and a school is funded so that its students may receive an education that is comparable to that of surrounding communities. No new Section 6 arrangements have been made in the past few years and the trend is toward the return of financial responsibility for these schools back to the local educational agencies. Since 1991, Fort Greely and Fort Richardson in Alaska and Fort Riley in Kansas have been returned to their respective local educational agencies.[14]

Transferral of Stateside Section 6 Schools

In the past twenty years, there have been no additions to the Section 6 school systems. In fact, congressional efforts have focused on the closing or transferral of operations of Section 6 schools from the DOD to the local educational agencies.[15] "In 1986, congressional budget cutters demanded that the Pentagon transfer school systems operated by the military on eighteen stateside posts to civilian control by July 1990."[16] However, these efforts by Congress have failed: "In the face of stiff opposition from military parents and local politicians, the Department of Defense has abandoned its three-year effort to close on-post schools on eighteen stateside military installations . . . ."[17] Local school officials in many areas refused to accept responsibility for what many foresaw as costly problems maintaining the facilities: "A 1988 Rand Corporation study of the transfer plan noted the military schools need more than $90 million in repairs and new construction to accommodate their student populations."[18] Federal officials were unable to guarantee that the federal government would pay for these projects before shifting responsibility for the schools to the local educational agencies.

Summary

Section 6 of Public Law 81-874 authorizes the establishment of a stateside school system that is managed and funded by the United States Department of Defense (DOD). Known as "Section 6 schools," there are currently eighteen Section 6 school systems which include sixty-eight schools and had a total student enrollment of 32,478 students in 1991.[19]

The Section 6 schools are located in the United States and Puerto Rico and are administratively independent from the Department of Defense Dependents Schools (DODDS) which operate overseas.

The Section 6 stateside schools are required by law to provide military family members with an education comparable to the local school system of the state in which the Section 6 school is located. Hence, any Section 6 school established in Hawaii would be established according to the standards set by Hawaii's public school system.

No new schools have been added to the Section 6 school system in the past twenty years. In fact, congressional budget cutters launched a full-scale effort in 1986 to either close the present schools or transfer their operations to the local educational agencies. The effort failed at least in part because local school officials in many areas refused to assume this costly responsibility.

ENDNOTES

1. U.S., Department of Defense, Department of Education, Construction, Repair, and Rehabilitation Needs of Dependent School Facilities Located on Military Installations in the U.S., Final Report, September 1987, p. 1.

2. 20 U.S.C.A. 238 (1990) and 20 U.S.C.A. 241 (1990). See Appendix C.

3. The history and origins of the DOD Section 6 school system have not been documented. It has been suggested, however, that these schools were established whenever a military installation was placed in an area where no schooling for military family members was available. Section 6 schools founded in the rural South are an example of this phenomenon. Also, Section 6 schools were established in Puerto Rico because of the necessity of providing the children of military personnel with an education taught in english. Telephone interview with John Erdman, Headquarters, Pacific Air Force, Director of Personnel Programs, Education Services Division, Hickam Air Force Base, Hawaii, December 21, 1992.

4. Letter from Hector Nevarez, Superintendent, DOD Stateside Schools, to Representative Patsy Mink, March 2, 1992.

5. Ibid.

6. U.S., Department of Defense, Department of Defense Section 6 Schools, February 22, 1991, p. 1.

7. Ibid.

8. Navarez letter.

9. Erdman interview.

10. Department of Defense Section 6 Schools, p. 1.

11. Ibid.

12. 20 U.S.C.A. 241 (1990). See Appendix C.

13. Ibid.

14. Erdman interview.

15. Army Times, January 23, 1989, p. 17.

16. Ibid.

17. Ibid.

18. Ibid.

19. Nevarez letter.

Chapter 4

HAWAII'S SITUATION

Impact Aid and Hawaii

In 1992, Hawaii received payment of approximately $22 million of impact aid (see Table 2-2 in Chapter 2). The amounts that Hawaii has received over the past decade have varied widely from a low of about $8 million to a high of approximately $28 million. See Table 4-1 in this chapter for an overview of the amounts received. It should be noted that differences in the amounts shown in the various tables are often due to revenue "carryover"--part of the previous year's amount is carried over into the next year.

Ranking of States by Impact Aid Revenue

Tables 4-2 through 4-6 essentially illustrate that in 1990 Hawaii received about $21 million in impact aid which ranked Hawaii as the tenth highest in terms of the amount of funding received. The state that received the most was Alaska at $74 million while Vermont got the smallest amount, about $11,000.

The Average Amount of Impact Aid Received Per Pupil

Using the 1990 figures, Table 4-7 shows the average amount of dollars in impact aid that each state received for their federally-connected students. Hawaii got approximately $618 for each military dependent. The highest ranking state, Alaska, got about $2,708 per pupil while Vermont got only $29 per student.

Why Did Alaska and Montana Get More Aid than Hawaii?

Tables 4-4 and 4-5 show that in 1990 a few states with smaller populations than Hawaii's received more impact aid than Hawaii. Alaska received over $73 million and Montana got slightly more than Hawaii at $21,315,628. Both Alaska and Montana have fewer federally-connected children than Hawaii. Yet, Alaska with 27,185 federally-connected students (combined totals of "A" and "B" students), received an average of $2,708 for each federally-connected student. Montana, with 13,018 federally-connected students, got $1,637 for each pupil. Hawaii received about $618 for each student (see Table 4-7). Why are these states with fewer federally-connected students able to receive so much in impact aid? There are two major reasons.

First, the Impact Aid Program provides greater financial assistance to local educational agencies impacted by the presence of federally-connected students with special needs.

Table 4-1

DEPARTMENT OF EDUCATION
IMPACT AID RECEIPT
1980-92
SUMMARY

STATE FY	TOTAL FOR STATE FY	FUNDS FOR SCHOOL YEAR (YEAR OF FEDERAL APPROPRIATION)											
		1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92
S80-81	11,790,475	11,790,475	0	0	0	0	0	0	0	0	0	0	0
S81-82	7,866,096	2,447,840	5,418,256	0	0	0	0	0	0	0	0	0	0
S82-83	16,352,118	0	5,357,568	10,994,550	0	0	0	0	0	0	0	0	0
S83-84	9,576,144	0	168,566	89,328	9,318,251	0	0	0	0	0	0	0	0
S84-85	8,360,666	0	0	130,312	(3,733)	8,234,087	0	0	0	0	0	0	0
S85-86	8,809,427	0	0	0	1,125,422	871,633	6,812,372	0	0	0	0	0	0
S86-87	17,711,423	0	0	0	0	4,400,242	4,686,801	8,624,380	0	0	0	0	0
S87-88	28,047,434	68,816	48,005	34,707	0	0	0	12,294,981	15,600,925	0	0	0	0
S88-89	23,447,887	—	—	—	—	—	—	512,929	6,976,212	15,958,746	0	0	0
S89-90	27,010,774	0	0	0	0	0	231,160	0	144,895	5,764,474	20,870,244		0
S90-91	22,499,061	0	0	0	0	0	0	0	0	415,514	348,621	21,734,926	0
S91-92	23,159,181	0	0	0	0	0	0	0	0	0	1,213,256	275,021	21,670,904
FY		1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92
		14,307,131	10,992,395	11,248,897	10,439,940	13,505,962	11,730,333	21,432,290	22,722,032	22,138,734	22,432,121	22,009,947	21,670,904

Source: Hawaii, DOE Budget Branch Office.

Table 4-2

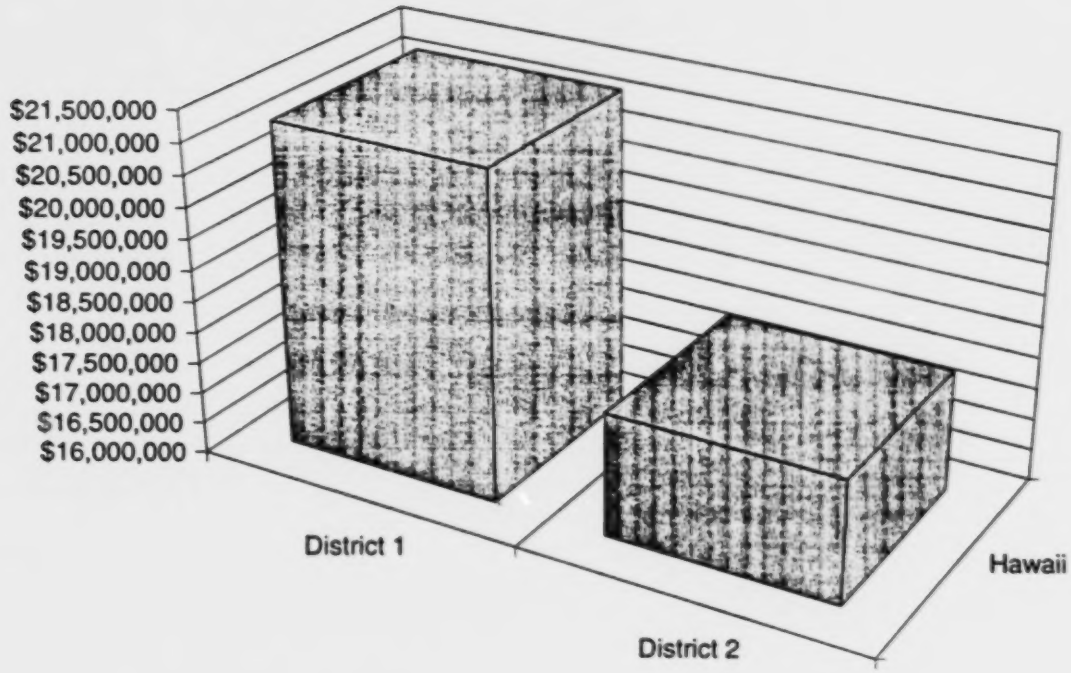
Hawaii

Total Impact Aid received statewide: $21,218,865.69

United States Senators

Akaka, Daniel K. (D)	720 Hart Office Building	224-6361
Inouye, Daniel K. (D)	722 Hart Office Building	224-3934

FY '90
Impact Aid Receipts
(by Congressional District)



United States Representatives by District

CD	Representative	Room & Building	Telephone	Total Impact Aid
1st	Abercrombie, Neil (D)	1440 Longworth	225-2726	$21,218,865.69
2nd	Mink, Patsy T. (D)	2135 Rayburn	225-4906	$17,957,480.99

Source: NAFIS's Impact Aid Blue Book: 1991-1992 Edition.

Table 4-3

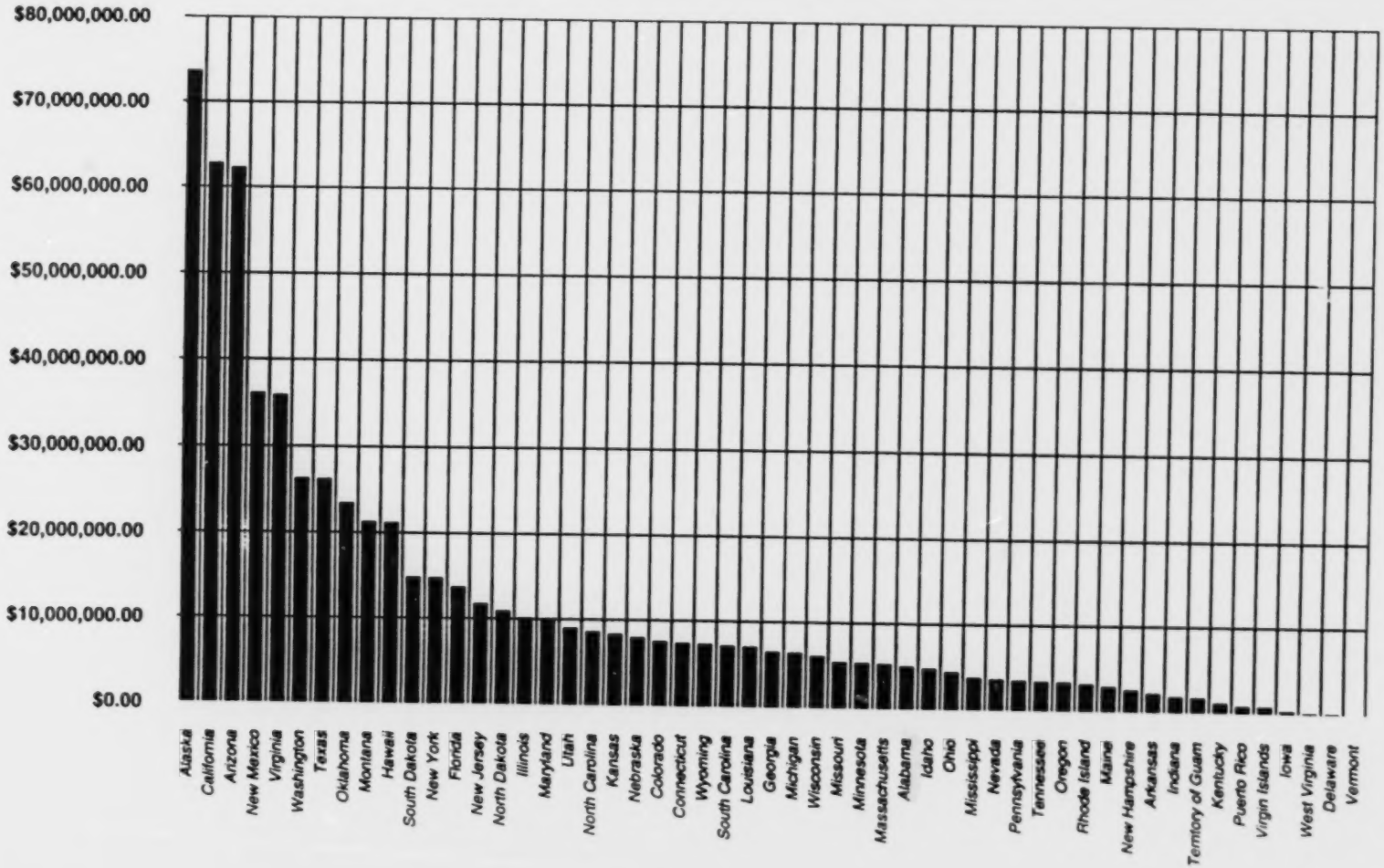
State Ranking of FY'90 Impact Aid Revenue

State	Total Received	Percentage of National Total
Alaska	$73,628,448.53	11.68%
California	$62,799,135.38	9.97%
Arizona	$62,288,870.34	9.88%
New Mexico	$36,172,086.40	5.74%
Virginia	$35,941,961.77	5.70%
Washington	$26,343,973.49	4.18%
Texas	$26,266,153.06	4.17%
Oklahoma	$23,490,583.00	3.73%
Montana	$21,315,628.67	3.38%
Hawaii	$21,218,865.69	3.37%
South Dakota	$14,840,436.25	2.35%
New York	$14,769,966.27	2.34%
Florida	$13,725,007.49	2.18%
New Jersey	$11,798,985.08	1.87%
North Dakota	$10,960,999.33	1.74%
Illinois	$10,154,712.15	1.61%
Maryland	$9,921,973.95	1.57%
Utah	$9,019,683.76	1.43%
North Carolina	$8,612,307.95	1.37%
Kansas	$8,347,750.66	1.32%
Nebraska	$7,997,418.22	1.27%
Colorado	$7,561,090.95	1.20%
Connecticut	$7,382,516.64	1.17%
Wyoming	$7,322,214.75	1.16%
South Carolina	$7,148,508.32	1.13%
Louisiana	$7,056,699.77	1.12%
Georgia	$6,516,877.24	1.03%
Michigan	$6,438,853.19	1.02%
Wisconsin	$6,079,154.79	0.96%
Missouri	$5,394,081.06	0.86%
Minnesota	$5,358,313.44	0.85%
Massachusetts	$5,249,855.34	0.83%
Alabama	$4,996,391.68	0.79%
Idaho	$4,775,720.20	0.76%
Ohio	$4,385,055.72	0.70%
Mississippi	$3,746,633.62	0.59%
Nevada	$3,593,085.39	0.57%
Pennsylvania	$3,478,537.51	0.55%
Tennessee	$3,372,672.95	0.54%
Oregon	$3,332,513.21	0.53%
Rhode Island	$3,149,050.15	0.50%
Maine	$2,887,092.40	0.46%
New Hampshire	$2,534,372.47	0.40%
Arkansas	$2,172,573.30	0.34%
Indiana	$1,799,759.56	0.29%
Territory of Guam	$1,708,587.25	0.27%
Kentucky	$1,149,780.98	0.18%
Puerto Rico	$799,599.18	0.13%
Virgin Islands	$772,894.84	0.12%
Iowa	$287,075.10	0.05%
West Virginia	$69,970.24	0.01%
Delaware	$40,659.16	0.01%
Vermont	$10,640.00	0.00%

Source: NAFIS's Impact Aid Blue Book: 1991-1992 Edition.

Table 4-4

Ranking of State Fiscal Year 1990 Impact Aid Revenue



Source: NAFIS's Impact Aid Blue Book: 1991-1992 Edition.

Table 4-5

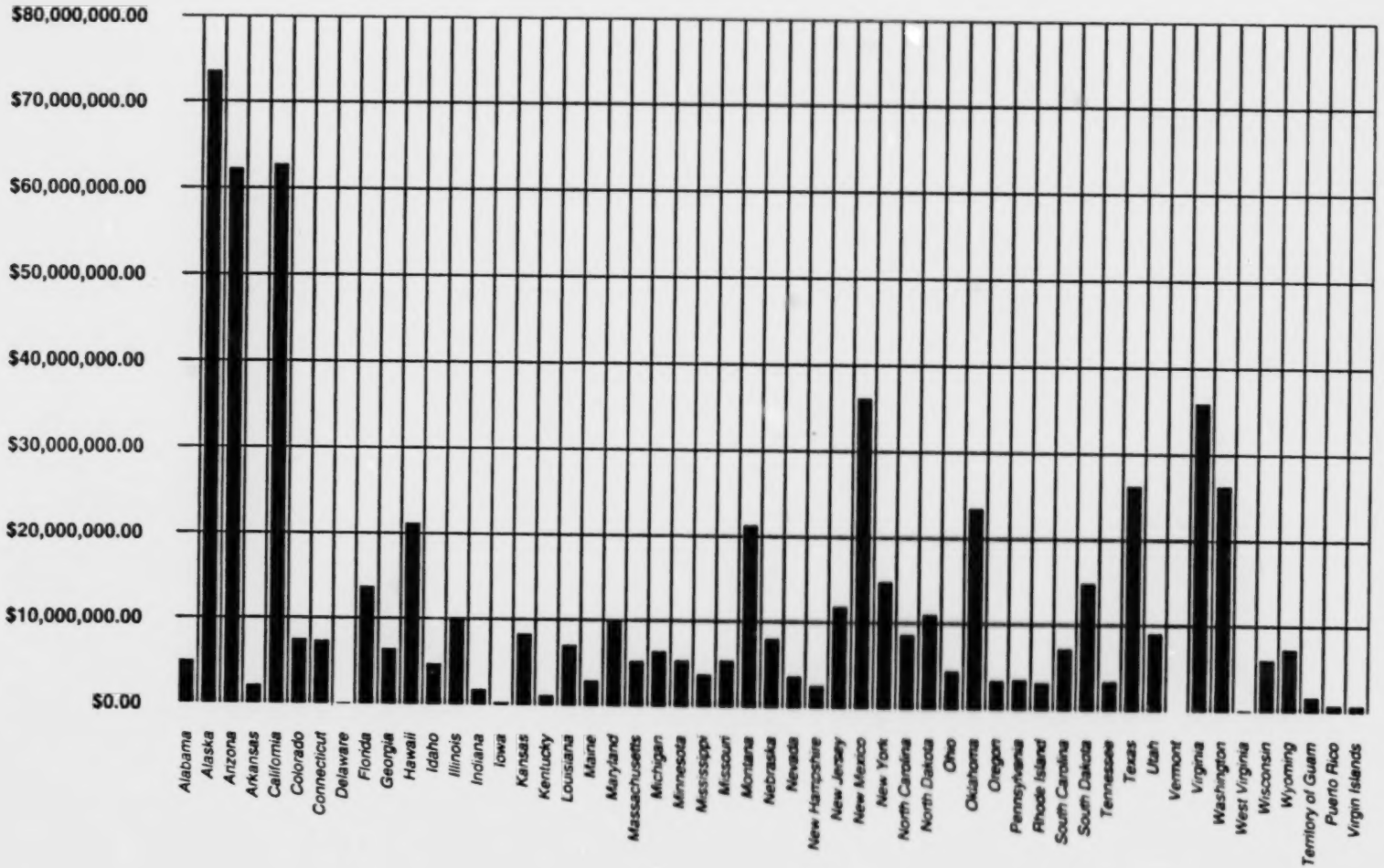
FY'90 Impact Aid Revenue, by State

State	Total Received	Percentage of National Total
Alabama	$4,996,391.68	0.79%
Alaska	$73,628,448.53	11.68%
Arizona	$62,288,870.34	9.88%
Arkansas	$2,172,573.30	0.34%
California	$62,799,135.38	9.97%
Colorado	$7,561,090.95	1.20%
Connecticut	$7,382,516.64	1.17%
Delaware	$40,659.16	0.01%
Florida	$13,725,007.49	2.18%
Georgia	$6,516,877.24	1.03%
Hawaii	$21,218,865.69	3.37%
Idaho	$4,775,720.20	0.76%
Illinois	$10,154,712.15	1.61%
Indiana	$1,799,759.56	0.29%
Iowa	$287,075.10	0.05%
Kansas	$8,347,750.66	1.32%
Kentucky	$1,149,780.98	0.18%
Louisiana	$7,056,699.77	1.12%
Maine	$2,887,092.40	0.46%
Maryland	$9,921,973.95	1.57%
Massachusetts	$5,249,855.34	0.83%
Michigan	$6,438,853.19	1.02%
Minnesota	$5,358,313.44	0.85%
Mississippi	$3,746,633.62	0.59%
Missouri	$5,394,081.06	0.86%
Montana	$21,315,628.67	3.38%
Nebraska	$7,997,418.22	1.27%
Nevada	$3,593,085.39	0.57%
New Hampshire	$2,534,372.47	0.40%
New Jersey	$11,798,985.08	1.87%
New Mexico	$36,172,086.40	5.74%
New York	$14,769,966.27	2.34%
North Carolina	$8,612,307.95	1.37%
North Dakota	$10,960,999.33	1.74%
Ohio	$4,385,055.72	0.70%
Oklahoma	$23,490,583.00	3.73%
Oregon	$3,332,513.21	0.53%
Pennsylvania	$3,478,537.51	0.55%
Puerto Rico	$799,599.18	0.13%
Rhode Island	$3,149,050.15	0.50%
South Carolina	$7,148,508.32	1.13%
South Dakota	$14,840,436.25	2.35%
Tennessee	$3,372,672.95	0.54%
Territory of Guam	$1,708,587.25	0.27%
Texas	$26,266,153.06	4.17%
Utah	$9,019,683.76	1.43%
Vermont	$10,640.00	0.00%
Virgin Islands	$772,894.84	0.12%
Virginia	$35,941,961.77	5.70%
Washington	$26,343,973.49	4.18%
West Virginia	$69,970.24	0.01%
Wisconsin	$6,079,154.79	0.96%
Wyoming	$7,322,214.75	1.16%

Source: NAFIS's Impact Aid Blue Book: 1991-1992 Edition.

Table 4-6

Fiscal Year 1990 Impact Aid Revenue, by State



Source: NAFIS's Impact Aid Blue Book: 1991-1992 Edition.

Table 4-7

IMPACT AID RECEIVED AVERAGE PER PUPIL

STATE	AMOUNT OF IMPACT AID RECEIVED IN 1990*	NUMBER OF FEDERALLY-CONNECTED KIDS (a+b) in 1990	AVERAGE OF DOLLARS PER PUPIL
Alabama	$4,996,391	55,300	$90
Alaska	$73,628,448	27,185	$2,708
Arizona	$62,288,870	48,323	$1,289
Arkansas	$2,172,573	10,369	$210
California	$62,799,135	173,635	$362
Colorado	$7,561,090	33,941	$223
Connecticut	$7,382,516	13,261	$557
Delaware	$40,659	1,534	$26
Florida	$13,725,007	78,643	$175
Georgia	$6,516,877	61,186	$107
Hawaii	$21,218,865	34,333	$618
Idaho	$4,775,720	14,737	$324
Illinois	$10,154,712	46,611	$218
Indiana	$1,799,759	11,533	$156
Iowa	$287,075	2,052	$140
Kansas	$8,347,750	15,999	$522
Kentucky	$1,149,780	19,016	$60
Louisiana	$7,056,699	32,277	$219
Maine	$2,887,092	7,659	$377
Maryland	$9,921,973	57,445	$173
Massachusetts	$5,249,855	20,212	$260
Michigan	$6,438,853	10,875	$592
Minnesota	$5,358,313	11,035	$486
Mississippi	$3,746,633	18,041	$208
Missouri	$5,394,081	21,437	$252
Montana	$21,315,628	13,018	$1,637
Nebraska	$7,997,418	12,635	$633
Nevada	$3,593,085	19,192	$187
New Hampshire	$2,534,372	2,145	$1,182
New Jersey	$11,798,985	23,113	$510
New Mexico	$36,172,086	47,303	$765
New York	$14,769,966	120,938	$122
North Carolina	$8,612,307	56,251	$153

Table 4-7 (cont'd)

STATE	AMOUNT OF IMPACT AID RECEIVED IN 1990*	NUMBER OF FEDERALLY-CONNECTED KIDS (a+b) in 1990*	AVERAGE OF DOLLARS PER PUPIL
North Dakota	$10,960,999	9,977	$1,099
Ohio	$4,385,055	37,060	$118
Oklahoma	$23,490,583	46,838	$502
Oregon	$3,332,513	6,559	$508
Pennsylvania	$3,478,539	47,700	$73
Rhode Island	$3,149,050	5,269	$598
South Carolina	$7,148,508	39,745	$180
South Dakota	$14,840,436	10,618	$1,398
Tennessee	$3,372,672	44,843	$75
Texas	$26,266,153	127,863	$205
Utah	$9,019,683	40,484	$223
Vermont	$10,640	368	$29
Virginia	$35,941,961	129,427	$278
Washington	$26,343,973	61,973	$425
West Virginia	$69,970	1,875	$37
Wisconsin	$6,079,154	8,235	$738
Wyoming	$7,322,214	9,943	$736

*These figures are from the NAFIS's Impact Aid Blue Book; 1991-1992 Edition. The figures are for 1990. The average was determined by dividing the amount of aid by the number of children.

Hence, the entitlement for handicapped students is one and one-half times the amount for nonhandicapped students. The entitlement for students living on Indian lands is one and one-quarter the amount for students living on non-Indian lands. States such as Alaska, Montana, South Dakota, and North Dakota have a very high percentage of their federally-connected students residing on Indian lands. Montana, for instance, has nearly ninety percent of its federally-connected students located on Indian lands. This twenty-five percent "add-on" greatly increases the amounts of impact aid that these states receive.[1]

Secondly, the amount that a state receives is influenced by the local contribution rate (LCR) of that particular state. The LCR is a major factor in the distribution formula of impact aid (see Chapter 2 for a discussion of this formula). A State's LCR is either one-half of the average amount spent to educate each pupil in that state or one-half of the national average amount spent to educate students in the United States--whichever amount is greater (see

Appendix C, 20 U.S.C.A. 238 d). The national average in per pupil expenditure in 1991 was $4,885.[2] Alaska has the highest average per pupil expenditure in the nation. In 1991, an average of $6,510 was spent on each pupil in the municipalities, and $12,809 was spent on each student in the rural areas. These combined averages create a total state average of $9,660.[3] This high per pupil expenditure means that Alaska's LCR will also be high and consequently, the state will receive a large amount of impact aid.

Hawaii's Federally-Connected Student

There were 35,736 federally-connected students throughout the State of Hawaii during the school year of 1991-1992. Of these, 16,574 are group "A" students and 19,162 are group "B" students. Table 4-9 illustrates the changes in the numbers of federally-connected students in Hawaii over the past twenty years. The numbers are slowly declining from the high of 47,682 federally-connected children in fiscal year 1972-1973, although most of the decline has occurred among "B" students.

The Percentage of "A" Students in Each Oahu School District

Oahu has four DOE departmental school districts: Honolulu, Central, Leeward, and Windward. Table 4-10 shows the numbers of "A" and "B" students in each district during the year 1991-1992. Computations of the percentage of "A" students in each district show that Honolulu has 2.3 percent of its federally-connected students being "A" students placing the district in the "regular A" or "super B" category. The Central District had sixty-seven percent of its federally-connected children in the "A" category. Slightly over one-third, 33.5 percent of the federally-connected children in the Leeward District were "A" students and 45.6 percent of the students in the Windward District were also "A" students. Because of the high percentages of "A" students in the Central, Leeward, and Windward districts, all three of these districts are considered to be "super A" districts. "Super A" districts receive the highest payments that are paid out to federally-connected students with no "add-ons" such as special education needs or residence on Indian lands.

Redrawing the Boundaries of Oahu's School Districts

The low percentage of federally-connected "A" students in the Honolulu District suggests the possibility of increasing that percentage by redrawing district lines to decrease the percentages in surrounding districts to increase the percentage in the Honolulu District. Since a school district is required to have a minimum of twenty percent of its students in the "A" category to be classified as a "super A" district, redrawing district boundaries may achieve this minimum. However, it is very important to note that the number of "A" and "B" students present in a district is also an important factor in the formula used to determine payments (see Chapter 2 for more information). Hence, redrawing district boundaries may

Table 4-8

I. PER PUPIL EXPENDITURE

November 12, 1992

Amount spent per pupil per year

	TOTAL PUBLIC EXPENDITURE	ENROLLMENT	PER PUPIL EXPENDITURE	% INCREASE OVER PRIOR YEAR
FY 1966-67	$136,127,098	166,375	$818.19	
FY 1967-68	$136,412,918	169,673	$803.98	-1.9%
FY 1968-69	$151,545,824	173,718	$872.37	+8.5%
FY 1969-70	$178,875,530	178,564	$1,001.74	+14.8%
FY 1970-71	$213,609,395	180,770	$1,181.66	+18.0%
FY 1971-72	$219,100,015	182,463	$1,200.79	+1.6%
FY 1972-73	$215,736,933	180,994	$1,191.96	-.7%
FY 1973-74	$260,424,976	177,767	$1,464.98	+22.9%
FY 1974-75	$261,895,784	176,381	$1,484.83	+1.4%
FY 1975-76	$304,685,554	175,795	$1,733.19	+16.7%
FY 1976-77	$340,916,355	174,442	$1,954.32	+12.8%
FY 1977-78	$348,856,537	172,181	$2,026.10	+3.7%
FY 1978-79	$357,258,411	170,096	$2,100.33	+3.7%
FY 1979-80	$393,046,694	168,025	$2,339.22	+11.4%
FY 1980-81	$435,186,996	164,438	$2,646.51	+13.1%
FY 1981-82	$451,041,608	162,120	$2,782.15	+5.1%
FY 1982-83	$522,578,959	161,335	$3,239.09	+16.4%
FY 1983-84	$522,674,772	161,610	$3,234.17	-.2%
FY 1984-85	$541,233,083	163,261	$3,315.14	+2.5%
FY 1985-86	$613,943,889	163,624	$3,752.16	+13.2%
FY 1986-87	$613,441,416	164,064	$3,739.04	-.4%
FY 1987-88	$655,209,085	165,680	$3,954.67	+5.8%
FY 1988-89	$699,458,370	167,039	$4,187.40	+5.9%

	PUBLIC EDUC. EXPENDITURE	ENROLLMENT	PER PUPIL EXPENDITURE	% INCREASE OVER PRIOR YEAR
FY 1989-90	$778,406,934	169,572	$4,590.42	+9.6%
FY 1990-91	$910,241,476	171,337	$5,312.58	+15.7%

Average annual percentage growth in per pupil exp. +8.1%

Over the 22 year period, the average increase in the expenditure per pupil was 8.1 percent per year.

The percentage increase in each year is dependent on several factors:

1. The revenue growth for that year constrains expenditures. The law specifies that you cannot spend more than you take in. Generally speaking, the larger the revenue growth, the larger the percentage increase in expenditure.
2. The percentage increases allowed for pay raises for employees and the percentage increases allowed for inflation for supplies and equipment also affect the percentage increases in expenditure from year to year. If pay raises are delayed and then given retroactively in the following year, the percentage increases would fluctuate more wildly.
3. If there is something extraordinary happening such as a teachers strike, this would tend to reduce expenditures in certain years.
4. Adjustment in the state employee fringe benefit contributions will also affect expenditures. Over the years, fringe benefits have fluctuated between 15 and 35 percent. At present, it is about 25 percent. For example, when the state changed from a contributory to a non-contributory retirement plan, there was a large drop in fringe benefit percentage.
5. Fluctuations in the R&M and capital improvements program (CIP) budgets also affect the annual expenditures. In some years, larger amounts are appropriated for CIP and R&M budgets. This affects the percentage increases from year to year.

Source: DOE Annual Report by the Office of Business Services.

Table 4-9

II. DATA ON IMPACT AID

December 2, 1992

FISCAL YEAR	TOTAL RECEIPT	NO. OF FEDERALLY CONNECTED STUDENTS A	B	TOTAL
1972-73	10,755,181	16,992	30,690	47,682
1973-74	10,319,414	15,990	27,681	43,671
1974-75	11,693,713	15,913	23,918	39,831
1975-76	12,218,320	15,391	22,556	37,947
1976-77	13,577,377	15,884	21,114	36,998
1977-78	16,453,241	15,347	19,545	34,892
1978-79	15,521,127	16,608	26,852	43,460
1979-80	16,332,233	16,482	24,263	40,745
1980-81	16,748,525	15,432	22,502	37,934
1981-82	7,866,096	15,391	20,802	36,193
1982-83	16,352,118	15,564	21,540	37,104
1983-84	9,576,144	15,717	22,588	38,305
1984-85	8,360,666	15,568	23,359	38,927
1985-86	8,809,427	15,391	22,655	38,046
1986-87	17,711,423	15,276	22,567	37,843
1987-88	28,047,434	15,757	21,964	37,721
1988-89	23,447,887	15,789	21,176	36,965
1989-90	27,010,774	16,029	20,890	36,919
1990-91	22,499,061	16,166	19,986	36,152
1991-92	23,159,181	16,574	19,162	35,736
1992-93	--	16,574	19,162	35,736*

*The new regulation authorizes the use of the prior year student survey count for payment.

Source: Hawaii, DOE, Office of Business Services

Table 4-10

DEPARTMENT OF EDUCATION
FEDERALLY CONNECTED STUDENTS
1991-92

1991-92 Final Report Sept. 3, 1992

	TOTAL	HONOLULU	CENTRAL	LEEWARD	WINDWARD	HAWAII	MAUI	KAUAI
3(a)1	24	0	16	8	0	0	0	0
3(a)1 LRH	137	88	26	15	5	3	0	0
3(a)2	15,088	13	11,104	2,312	1,616	13	2	28
3(a)2 LRH	21	10	2	6	0	3	0	0
3(a)2 SPED	1,304	5	987	175	133	1	0	3
ST	16,574	116	12,135	2,516	1,754	20	2	31
3(b)1	49	1	33	10	4	1	0	0
3(b)1 LRH	4,769	3,055	472	408	289	323	109	113
3(b)(2) A	10,852	1,556	3,795	3,530	1,327	228	43	373
3(b)(2)(a) LRH	71	35	7	16	10	2	1	0
3(b)3	3,211	144	1,527	988	432	70	26	24
3(b)3 SPED	210	13	112	46	30	7	1	1
ST	19,162	4,804	5,946	4,998	2,092	631	180	511
TOTAL	35,736	4,920	18,081	7,514	3,846	651	182	542
OTHER DATA								
% of total Fed connected Stud't	100.00%	13.77%	50.60%	21.03%	10.76%	1.82%	0.51%	1.52%
ADA (Prior Yr)	160,273	32,141	33,085	27,894	18,503	22,906	16,488	9,257
ADM (Prior Yr)	171,337	34,304	34,850	30,162	19,527	24,948	17,710	9,835
Enrollment	174,708	34,084	35,718	31,201	19,620	25,552	18,421	10,112
on count date	10/01/91							
No. tuition recd	0	0	0	0	0	0	0	0
No. tuition paid to attend other	13	6	2	2	3	0	0	0
No. provided free education	174,721	34,090	35,720	31,203	19,623	25,552	18,421	10,112
Total Federally Connected	35,736	4,920	18,081	7,514	3,846	651	182	542
Percent of Enroll Fed Connected	20.45%	14.43%	50.62%	24.08%	19.60%	2.55%	0.99%	5.36%

Total Current Exp Preceding Yr	793,080,190
Total Current Exp Current Yr	848,595,771
Total Exp SPED	69,135,290
Total State Aid	675,941,348
Tot St Hand Aid	64,991,187
Tot Part B Funds	3,844,045
Tot Child Ct 94-142	13,516

Percentage of "A" students in each district:

Honolulu District - 2.3% (regular "A" district)
Central District - 67% (super "A" district)
Leeward District - 33.5% (super "A" district)
Windward District - 45.6% (super "A" district)

(Percentages were computed by taking the subtotal of "A" students in each district and dividing by the total of federally-connected students for that district.)

Source: DOE, Budget Branch.

place the Honolulu District in the "super A" category but it will also reduce the number of "A" students in the surrounding districts and place them in the Honolulu District. The final result may be payments that are equivalent to what Hawaii receives now.

It is also important to note that the administrative units that compose Hawaii's single statewide school system have already been redefined to increase the amounts of impact aid received by the DOE. In the early 1980's, United States Senators Daniel Inouye and Spark Matsunaga realized that Hawaii's single statewide school system was placing Hawaii in a disadvantaged position in terms of the amounts of aid that the State was receiving. A single statewide system meant that the numbers of federally-connected children in the State were only a small percentage of the entire statewide school enrollment. Hence, this small percentage generated very little impact aid. In 1983, Inouye and Matsunaga added a provision to a congressional appropriations bill that allowed Hawaii's seven administrative (departmental) school units to be treated as seven separate school districts, solely for the purposes of the impact aid formula.[4] The Honolulu, Central, Leeward, and Windward districts are on Oahu while the Hawaii, Maui, and Kauai districts are located on their respective neighbor islands. By converting Oahu into four major school districts, the percentage of federally-connected students in each district increased greatly and so did the amounts of impact aid received by the DOE. Hawaii's payment of $8.8 million in 1985 jumped to $17.7 million in 1986.

Federally-Connected Pupils by Schools

The following table lists the Oahu schools that enroll military family members. The left column names the school, the middle column describes the percentage of that school's enrollment that is composed of military family members,[5] and the right-hand column lists the map number and key so the location of that school may be found in the Bryan's Sectional Maps (1992 Edition) found in Appendix F. The schools that have a total school enrollment of fifty percent or more of military family members are indicated on the maps with a sunburst design.

SCHOOL	PERCENT OF TOTAL SCHOOL ENROLLMENT ACTIVE-DUTY DEPENDENTS	MAP NO. & KEY
Aiea	3	1 E 3
Aiea High	4	1 D 2
Aiea Intermediate	7	1 D 3
Aliamanu	67	4 B 3
Aliamanu Intermediate	68	4 B 3
Hale Kula	98	78 C 1
Haleiwa	2	65 B 1
Helemano	14	73 F 2

SCHOOL	PERCENT OF TOTAL SCHOOL ENROLLMENT ACTIVE-DUTY DEPENDENTS	MAP NO. & KEY
Hickam	99	3 F 1
Iliahi	9	80 B 1
Kaala	4	78 C 4
Kipapa	18	83 B 3
Leilehua High	33	79 B 3
Makalapa	57	3 A 4
Mililani High	16	83 C 3
Mokulele	100	3 D 4
Nimitz	99	4 D 1
Pearl Harbor	60	4 C 1
Pearl Harbor Kai	92	3 C 4
Pearlridge	6	94 A 3
Radford	66	3 A 4
Red Hill	50	2 D 3
Salt Lake	6	4 A 3
Scott	15	1 E 2
Shafter	88	7 F 3
Solomon	94	77 D 3
Wahiawa	8	79 B 2
Wahiawa Intermediate	49	79 C 2
Waialua	4	64 D 4
Waialua High/Intermediate	2	64 E 3
Mililani-Uka	21	83 F 3
Mililani-Waena	16	83 C 3
Moanalua	18	7 F 1
Moanalua High	23	5 A 1
Moanalua Intermediate	35	7 F 1
Waimalu	4	91 F 4
Webling	19	1 D 3
Wheeler	92	78 D 3
Wheeler Intermediate	19	78 D 3

Impact Aid and the Students of Hawaii

During the fiscal year of 1990-1991, the DOE assumed responsibility for the education of 36,152 federally-connected students (see Table 4-9). The DOE's total student enrollment for that year was 171,337 (see Table 4-8). Hawaii received $22,499,061 in impact aid during the fiscal year of 1990-1991. Hence, the DOE received about $622 for each federally-connected student[6] although Hawaii spent an average of $5,312.58 per pupil on a statewide basis.[7]

Subtraction of $622 (the average amount of impact aid received for each federally-connected pupil) from the average per pupil expenditure of $5,312.58 shows that the

State spent about $4,691 for each federally-connected student in Hawaii during the fiscal year of 1990-1991.

Therefore, the amount of impact aid received by the State does not cover the entire cost of educating these military family members. In fact, the presence of 36,152 military family members in Hawaii's public school system resulted in the DOE spending about $170 million in state funds to educate these children in 1990-1991.[8] Table 4-11 illustrates that although the amounts of impact aid received by the State have risen over the years, so has the total cost of educating these students. The amounts of impact aid received have never covered the entire cost of educating Hawaii's federally-connected children. In fact, the State's expenditure (column 6 on the far right of Table 4-11) has risen steadily over the past twenty years despite the increases in the amounts of impact aid received. Based on average per pupil expenditures, in the nineteen years between fiscal year 1972-1973 to 1990-1991, state expenditures on students of military families exceeded impact aid receipts by approximately $1.8 billion.

Impact Aid and the DOE

What Does the DOE Do with the Impact Aid Funds?

Impact aid funds are presently deposited into the central salary account along with the general funds that are used to pay the salaries of regular and special education teachers. The funding for salaries are not allocated; only the positions are allocated using a statewide formula. Once the number of positions has been allocated to a school, the school is then free to hire any qualified teacher from the eligible list without worrying about the salary of that teacher. The teacher's salary will come out of the central salary account.[9]

Why Does the Impact Aid Go Into the State General Fund?

Military family members are treated on an equal basis with the other students who attend Hawaii's public school system. All students receive equal educational opportunities. Unlike other federal grants which are earmarked to provide supplemental services for certain types of students, impact aid funds are considered to be a reimbursement to the State for educating federally-connected students. It is the policy of the DOE that these funds be used for basic services, not supplemental services.[10]

How Is the Impact Aid Allocated to the Schools By the DOE?

Hawaii is unique in that it is the only State in the nation with a single statewide school system. Hence, impact aid funds do not have to be carefully distributed among many independent and separate school districts according to entitlement, as is the practice in other states. Instead, the funds are deposited into the central salary account and used to pay the salaries of teachers. It is not allocated to any specific schools.[11]

Table 4-11

AMOUNT OF STATE FUNDS SPENT TO EDUCATE MILITARY FAMILY MEMBERS IN HAWAII

FY	No. of Students (A+B Combined)	Per Pupil Expenditure	Total State Cost	Amount of Impact Aid Received	Difference That State Spent
72-73	47,682	$1,191.96	$56,835,037	$10,755,181	$46,079,856
73-74	43,671	$1,464.98	$63,977,142	$10,319,414	$53,657,728
74-75	39,831	$1,484.83	$59,142,264	$11,693,713	$47,448,551
75-76	37,947	$1,733.19	$65,769,361	$12,218,320	$53,551,041
76-77	36,998	$1,954.32	$72,305,931	$13,577,377	$58,728,554
77-78	34,892	$2,026.10	$70,694,681	$16,453,241	$54,241,440
78-79	43,460	$2,100.33	$91,280,342	$15,521,127	$75,759,215
79-80	40,745	$2,339.22	$95,311,519	$16,332,233	$78,979,286
80-81	37,934	$2,646.51	$100,392,710	$16,748,525	$83,644,185
81-82	36,193	$2,782.15	$100,694,355	$7,866,096	$92,828,259
82-83	37,104	$3,239.09	$120,183,195	$16,352,118	$103,831,077
83-84	38,305	$3,234.17	$123,884,882	$9,576,144	$114,308,738
84-85	38,927	$3,315.14	$129,048,455	$8,360,666	$120,687,789
85-86	38,046	$3,752.16	$142,754,679	$8,809,427	$133,945,252
86-87	37,843	$3,739.04	$141,496,491	$17,711,423	$123,785,068
87-88	37,721	$3,954.67	$149,174,107	$28,047,434	$121,126,673
88-89	36,965	$4,187.40	$154,787,241	$23,447,887	$131,339,354
89-90	36,919	$4,590.42	$169,473,716	$27,010,774	$142,462,942
90-91	36,152	$5,312.58	$192,060,392	$22,499,061	$169,561,331

The figures in this table were computed by taking the numbers of students (combined "A" + "B") and multiplying by the per pupil expenditure to determine total state cost. Then the amount of impact aid received was subtracted from the total state cost to determine the difference that the DOE spent in state funds.

Impact Aid and State Funds

Impact aid funds provide only a small percentage of the funding necessary to educate federally-connected students in Hawaii. Most of the money comes from state funds:

> . . . in the education of the 36,000 federally-connected students [1988-89 figures], the $20 million impact aid funds represent only 12.3 percent of the total $4,522.91 expected to be expended for educating each of these students this year. The other 87.7 percent comes from state funds (80.5%), other federal grants (5.2%), and special funds (2.0%).[12]

During the fiscal year of 1989-1990, Hawaii's public schools had a total budget of about $759.8 million. The $20 million of federal impact aid received by the state represented only 2.6 percent of this total budget.[13] If impact aid was lost or reduced in the past, the State made up the difference. For example, in the early 1980's, impact aid was cut from a high of $17 million to a low of $7 million. The State increased its funding to make up the federal reductions and maintain its previous level of services.[14]

The Decline of Federal Funding

Efforts by the federal government to reduce impact aid through various devices such as the reduction and/or elimination of type "B" payments (see Chapter 2 for more details) may result in a reduction of the amount of impact aid received by the states. In fact, Table 2-2 in chapter 2 illustrates the decreasing appropriations that have taken place over the past few years in nearly every state in the nation. Hawaii is not exempt from this decline in federal funding and 1993 figures show less funding than in previous years.

The Decline of State Funding

In the past, the State of Hawaii made up for declines in federal impact aid through the use of state funds. Educational services were maintained at their previous levels. Unfortunately, the State may not be able to make up for future losses of federal funds. The currently weakened state economy has led to a cut in state revenues and a freezing of the DOE's budget for the next two fiscal years. "But the department's $671 million annual budget won't be enough to cover growing student enrollment and new schools and facilities, said Schools Superintendent Charles Toguchi."[15] The limited budget will have to accommodate a system that is expected to grow by 2,200 new students in each of the next five years.[16] "In a memo to members of the state Board of Education, Toguchi said $22.6 million more will be needed in the 1993-94 fiscal year, and $26.3 million the year after."[17]

The Results of the Decline in State Funding

In this atmosphere of limited state funding for education, it may be difficult for the State to make up any differences that will result from the decline or loss of federal impact aid. Although the State has always been able to make up the differences in the past, circumstances in the near future may make this impossible. The result of this financial crunch will probably be a reduction in the services that the public schools provide to their students statewide. Since the public school system cannot limit enrollment, the increasing enrollment combined with declining federal aid and restricted state funds may result in larger classes, fewer textbooks, and less instructional supplies and other classroom equipment.

Options for Maximizing the Existing Impact Aid Funds

Remove Impact Aid from the General Fund

Some military parents fault the State of Hawaii for placing impact aid funds into the general fund and the central salary account instead of allocating it to the schools with military dependents. They feel that impact aid should be an additional supplemental fund that benefits the schools with military students. However, Hawaii's statewide school system does not consider impact aid to be a fund for supplemental services:

> Since the funds are not used for supplemental services but are used instead to provide basic services, it does not matter if impact aid were earmarked for specific schools. If the funds were earmarked for specific schools, a comparable amount of state general funds would be reduced from those schools and the overall allocation would still be the same. In short, a school would not receive more funds if impact aid funds were allocated to individual schools. On the other hand, earmarking impact aid funds for specific schools would only result in more paperwork and recordkeeping. It would not result in additional services. This is essentially why the funds are not allocated to specific schools with military dependents.[18]

Charge Tuition

Charging tuition to supplement the federal Impact Aid Program is an idea that has been discussed in Congress in the past.[19] This idea usually takes two forms: one is to charge the military parents tuition for each child in the public school system. The other is to charge the Department of Defense for each military dependent in the school system. Although the idea of charging military parents tuition has been discussed, the idea has not been implemented by any of the states because it would probably violate the United States Constitution in addition to the constitutions of many states. In 1981, for instance, the United

States Supreme Court ruled that Texas could not charge illegal aliens tuition for the public education of their children.[20] A state would be hard pressed to justify making military parents pay a tuition that illegal aliens do not have to. Also, no state has attempted to charge the DOD tuition, which ultimately would require a congressional appropriation.

Applying for Extra Impact Aid

The continual reduction in congressional appropriations for the Impact Aid Program in addition to the possible elimination of payments for type "B" students does not make this a promising option.

Maximizing the Existing Impact Aid Applications

The DOE should ascertain whether Hawaii is receiving its full share of aid from all of the Impact Aid Programs. Greiner and Jones[21] conducted a study in seven districts in southeastern Virginia in an area that is heavily impacted by military installations. They studied the data concerning special education students and discovered that many of the areas were receiving much less in impact aid funds than they were entitled to:

> These data revealed wide variances reported by comparable LEAs [Local Education Agencies]. The percentage of military-connected children in special education classes in contiguous LEAs ranged from 10.8 percent to 1.3 percent of the total military enrollment. Further investigation indicated that the discrepancies were partially attributable to incomplete record keeping and inaccurate reporting. In some cases, LEAs were not aware that all handicapping conditions were eligible for Impact Aid payments and therefore did not include speech impaired and other categories receiving special education in regular classrooms. Not all LEAs understood that handicapped students were entitled to larger (150 percent) Impact Aid payments than nonhandicapped students received, and that underreporting of handicapped students resulted in a substantial loss of revenue to the LEA. Jones and Salmon estimated that one LEA lost over $400,000 in the 1985-87 period due to underreporting of handicapped students.[22]

The Issue of School Choice for Military Personnel

The military personnel who are stationed in Hawaii do not have the option of sending their children to a DOD school since there are no Section 6 schools in the State. Some of these military parents claim that Hawaii's public schools have a poor reputation on the mainland and that they would prefer to have their children attend Section 6 schools.

Advantages of DOD Schools

DOD schools are believed to be of better quality by some military parents and this quality is believed to be standardized among all of the stateside DOD schools.[23] This standardization of quality enables children of military families to maintain continuity in their education despite frequent moves.

> Military dependents are highly mobile students. The frequency, suddeness, and unpredictability of military reassignment procedures cause serious social and psychological stress on those students. Education programs which are not consistent from area to area can cause children to arrive far behind or ahead of new classmates, generating a traumatic dislike for school which impedes their adjustment to schools. This stress from the constant movement of military children contributes to the instability of the family . . .[24]

Section 6 schools also have special programs that address the specific educational needs of military family members. Special programs provide counselling when the child's parents are deployed overseas; and orientation programs exist for new students who must start at a new school in the middle of the school year.[25] Some parents also report that the Section 6 schools provide more after-school enrichment programs in music, computer-usage, and so forth.[26]

As discussed in Chapter 3, however, these military parents may be unaware that the Section 6 DOD schools are required to be comparable to local schools. Consequently, a Section 6 school established in Hawaii would be designed to replicate the very schools of which they complain.

Options for School Choice

There are some options available to military parents stationed in Hawaii who are not satisfied with the Hawaii public school system.

Private Schools

Many parents in Hawaii, not just military parents, have chosen to send their children to private schools. The result is that Hawaii has one of the highest percentages of private school enrollment of any state in the United States: 17.2 percent.[27] Unfortunately, the high cost of private education in Hawaii may make it prohibitive to the families in the lower ranks of the military. Some of the higher ranking military personnel are exercising this option although the private schools in Hawaii do not have the special programs that the Section 6 schools have to fulfill the specific needs of the military children.

Homeschooling

Homeschooling is an alternative that some military parents find satisfying.[28] The DOE allows homeschooling as an alternative education program in which any parent is considered a qualified instructor who assumes the responsibility of educating their own child.[29] The parent must supply a notice of intent to the principal of the child's district school in addition to submitting an annual report describing the child's progress. The child may voluntarily participate in testing that takes place at certain grade levels in the public school system.

School/Community Based Management (SCBM)

The SCBM program was mandated by the Legislature in 1989 in an effort to place more control of the public schools in the hands of teachers and parents with children in the schools. In participating schools, parents and teachers work with the principal of the school to determine how the school should be run. This DOE program attempts to decentralize decision-making by placing it in the hands of parents and teachers. Military parents should consider extensive participation in the program and/or the SCBM council. Anyone is allowed to participate--state residency is not required.[30] This participation would enable them to influence the priorities, goals, curriculum, and learning climate at their childrens' schools.

Greater Participation in the Democratic Process

Military personnel who are eligible to vote in Hawaii can also become involved in the public school system through the elected Board of Education (BOE). Greater participation in the community and on significant policy-making boards may result in improvements in the quality of education. Also, the special needs of the children of military families would be made known to the BOE and the DOE. However, participation on this level has been hindered by the fact that many military members and their families are not residents of the State of Hawaii. To the extent they are ineligible to vote, they have no voice in local government: "The notion of paying state tax is a major deterrent to getting military people to register and vote in their local community."[31] Without state residency they are not eligible to run for elective office. Currently, there is only one member of the BOE, with an extensive background in the military.[32]

School District Advisory Councils

Each departmental school district has an advisory council that serves in an advisory capacity to the BOE. Council members are appointed by the Governor and military personnel have been appointed in the past to the advisory councils of districts with large military populations. Military parents should work toward the continuation of this practice. The advisory councils work with the BOE and the district superintendent of each school district to advise the BOE in the development of policies, disseminate information to the community, and insure cooperation between the community and the educators on educational matters of mutual concern.[33]

Creation of a Military School Board

It has been suggested that the State could create a separate Military School Board that would allow military parents to assume control of policy at the schools located on the military installations. The military parents would elect the representatives and the board may have its own funds provided by the DOE. This is an idea that is problematic:

First, a Military School Board that represents only the military could only control the policies of schools that are composed entirely of military family members. Most of the students in the schools located on the military bases are military family members. (See Chapter 4 for the percentage of military family members attending various schools.) However, it should be noted that many military children, especially older children, attend schools that are not located on the bases and that they (military family members) do not comprise the majority of those schools' populations. The Military School Board would not be effective at those schools.

Secondly, since a person is required to be a registered voter to run for the Board of Education, the State would have to eliminate the residency requirement for persons running for the Military School Board. Since most active military personnel are not Hawaii residents, they are currently not eligible to run for office in the State of Hawaii.

Thirdly, it may be considered discriminatory to hold an election in which only military personnel are allowed to run for office. Also, the definition of "military" personnel remains problematic. The term could be viewed narrowly as applying only to military parents with children in one of the base schools. Interpreted broadly, it could include retired military personnel and to people who are in the military reserves.

Summary

Hawaii received approximately $22 million for impact aid in 1992. In 1990, Hawaii received about $21 million which ranked it as the tenth highest state in terms of the amount of funding received. A few states, like Alaska and Montana, with smaller populations and fewer federally-connected students than Hawaii, received more impact aid than Hawaii. This was due to the high percentage of federally-connected students who reside on Indian lands in these states. Students who reside on Indian lands get a larger entitlement (twenty-five percent more) than students who reside on non-Indian lands. Alaska's public school system also spent more per pupil than any other state in the nation giving it a very high Local Contribution Rate (LCR). A State's LCR is an important factor in the formula used to determine a State's impact aid payments.

During the fiscal year of 1990-1991, Hawaii received about $22.5 million in impact aid. There were 36,152 federally-connected students in Hawaii's public schools that year. Hence,

the DOE received approximately $622 for each of these military family members. Since the DOE's per pupil expenditure for that year was $5,312.58, approximately $170 million in state funds was spent to make up the cost differential in educating these federally-connected students. During the past twenty years, the federal government has never given the State the full amount that was spent to educate these students; instead, the cost differential that the State must pay is increasing with each fiscal year. Based on average per pupil expenditures, state expenditures on students from military families exceeded impact aid receipts by a total of over $1.8 billion between the 1972-1973 and 1990-1991 fiscal years.

Impact aid funds go into the state general fund where it becomes part of the central salary account used to pay the salaries of the public school teachers. These funds are used for basic services, not supplemental services.

Declining congressional appropriations will probably result in smaller impact aid payments to many of the states. Unfortunately, Hawaii's economy is weak at the moment resulting in a reduction of state revenues. Limited state funding combined with reduced federal impact aid payments will most likely result in a statewide reduction in the services that the public schools provide to their students. Removing impact aid from the state general fund, attempting to charge military parents tuition, and applying for extra impact aid payments, will probably not solve the DOE's funding shortage. Redrawing Oahu's school district boundaries will most likely not increase impact aid payments since three of the four school districts are already classified as "super A" districts. However, the DOE should ascertain whether Hawaii is receiving its full payment for special education students.

Some of the military personnel stationed in Hawaii are dissatisfied with the quality of Hawaii's public schools. They believe that their children would receive a better education in a Section 6 school that is managed by the Department of Defense (DOD). Options presently available to military parents stationed in Hawaii include sending their children to private schools, engaging in homeschooling, or participating in SCBM, BOE elections, and the School District Advisory Councils.

ENDNOTES

1. Telephone interview with John Forkenbrock of the National Association of Federally Impacted Schools (NAFIS), Washington D.C., December 2, 1992.
2. Ibid.
3. Ibid.
4. Pub. L. 98-139, 98th Cong., 1st Sess., III, U.S. Department of Education, October 31, 1983.
5. Hawaii, Department of Education, Focus: Statistical Information, Economic Impact and Military Contributions to Hawaii, Military Liaison Resource Teacher, June 1990, pp. 2-3.
6. $22,499,061 divided by 36,152 equals $622.34.

7. Financial Report, July 1, 1990-June 30, 1991, Department of Education, State of Hawaii (Honolulu: 1991), pp. 4-8. Figures for the fiscal year of 1990-1991 are used because the DOE had not issued its final annual report for 1991-1992 at the time that this study was being written.

8. 36,152 multiplied by $4,691 equals $169,589,032.

9. Hawaii, Department of Education, Budget Branch, Funding and Impact Aid, Honolulu, 1990, p. 2.

10. Ibid., p. 1.

11. Ibid., pp. 6-7.

12. Ibid., p. 7.

13. Ibid., p. 2.

14. Ibid.

15. Honolulu Star-Bulletin, September 1, 1992, p. A-1.

16. Ibid.

17. Ibid.

18. Hawaii, Department of Education, Funding, p. 6.

19. See U.S., Congress, Senate, Committee on Armed Services, Hearing on Effects of Reduction of Impact Aid on Military, 97th Cong., 1st sess., June 24, 1981.

20. Plyler v. Doe, 457 U.S. 202 (1981).

21. Charlene E. Greiner and Philip R. Jones, "Federal Impact Aid for Handicapped Military Dependents: Are School Districts Collecting Their Full Share?," Journal of Education Finance, Winter, 1989.

22. Ibid., pp. 410-411.

23. Interview with an anonymous military parent stationed at Schofield Barracks, August, 1992.

24. U.S., Congress, Senate, Committee on Armed Services, Hearing on Effects of Reduction of Impact Aid on Military, 97th Cong., 1st Sess., June 24, 1981, p. 48.

25. Interview with the wife of a captain stationed at Schofield Barracks, August, 1992.

26. Ibid.

27. John Bickel, "Abandoned Schools," Honolulu Magazine, September 1992, p. 30.

28. Interview with anonymous military parent, August 1992.

29. Hawaii Administrative Rules, DOE, Title 8, Chapter 12, Sections 18 and 19, 1991.

30. Telephone interview with Arthur Kaneshiro, School Community-Based Management office, Department of Education, September 3, 1992.

31. Army Times, April 6, 1992, p. 40.

32. Telephone interview with Francis McMillen at Board of Education office, December 4, 1992.

33. Ibid.

Chapter 5

THE FEASIBILITY OF SWITCHING SOME OF OAHU'S SCHOOLS FROM THE STATE DOE TO THE UNITED STATES DOD

Introduction

The earlier chapters of this study have illustrated the failure of the federal government to accept full responsibility for the costs of educating federally-connected students in the State of Hawaii. The United States Department of Education provides impact aid which does not cover the entire cost of educating these students. Future appropriations of impact aid are expected to be even lower. However, Hawaii is not the only state facing this situation.

The Illinois Case

In 1990, the state of Illinois received a little more than $10 million to educate 46,611 federally-connected children (see Table 4-7 in Chapter 4.) They received approximately $218 for each federally-connected student. In an effort to get the Pentagon to take full responsibility for the cost of educating the children of military personnel, both houses of the Illinois legislature voted in the spring of 1992 to allow the school districts to petition for the detachment of military installations from the school systems. (See Appendices G, H, and I.) The bill passed by the Illinois legislature would allow the school districts to redraw their boundaries and exclude the military bases. The Illinois House action is a drastic step on behalf of three northern districts that are losing millions of dollars each year educating military dependents.

> One district, North Chicago Unit School District 187, is on the brink of a possible state financial takeover because of the effects of its small tax base and the large number of students it serves from the Great Lakes Naval Training Center. The district has estimated it loses $3 million a year because of low reimbursements from the Pentagon for the 2,000 military dependents in its classrooms.
>
> Highwood-Highland Park School District 111 has estimated a loss of $1.5 million a year on the 400 children it serves from Ft. Sheridan.
>
> Glenview Community Consolidated School District 34 says it loses about $1.1 million a year on the 260 youngsters it educates from the Glenview Naval Air Station.
>
> The bill passed Wednesday would allow the three districts and Downstate districts that serve Chanute Air Force Base near Rantoul and Scott Air Force Base near Belleville to redraw their boundaries and exclude the military installations.[1]

To become law, the bill must also be signed by Governor Jim Edgar. If the governor signs the measure, Illinois officials hope that the Pentagon will be forced to develop on-base schools (such as those in the existing Section 6 stateside school system) or contract with the districts to pay tuition that would include the full cost of educating the military family members. The Pentagon has made no response to the Illinois measure, "A Defense Department spokesman, Lt. Col. Doug Hart, said the Pentagon knows of the bill but would have no comment unless the measure becomes law. Hart said no other state has taken the action being carried out in Illinois."[2] Illinois officials feel that the federal government will take the legislation to court if the bill becomes law.[3]

The Hawaii Case

In 1992, the Hawaii Legislature reviewed H.B. No. 2617 entitled "Relating to the Transfer of Certain Public Schools to the United States Department of Defense Pursuant to Public Law 81-874" (see Appendix J). Due to the unhappiness of some military parents with the quality of education that their children were receiving in Hawaii's public schools, this bill sought to transfer the managerial, administrative, and organizational responsibility of all public schools located on Hawaii's military installations and attended mostly by military family members from the state Board of Education to the United States Department of Defense. The bill also sought to establish two new school complexes in the proximity of existing military installations. The first was to be established around Wheeler Intermediate School and the second was to be located around Radford High School.

This bill resulted in intense discussion of many of the issues surrounding the presence of military family members in Hawaii's public schools:

> Hearing debate was enthusiastic and at times testy. Many legislators asked questions, wondering aloud why the military "brass" weren't there in person to say yeah or nay, and aired their frustration with the vocal criticism of military parents. Some legislators were quick to note the minimal $22.5 million federal impact aid money, designed to offset state costs in educating military children whose parents offer a limited local tax base.
>
> The committee was about half in favor of passing the bill out and half against. Some said it amounts to a form of discrimination. Others said passing it out will generate badly needed dialogue. In the end, the chair chose to hold the bill in committee.[4]

Charles Toguchi, state Superintendent of Education, said in his testimony to the committee that the bill "tried to deal creatively 'with some military parents' dissatisfaction with

public education in Hawaii' but 'similar departmental attempts in the past' were unsuccessful."[5] (See Appendix K for the text of Toguchi's testimony.) The military viewpoint was represented by the Military Affairs Council of the Chamber of Commerce of Hawaii (see Appendix L).

The bill was eventually killed in committee which decided instead to draft a resolution exploring the issues surrounding a transfer of responsibility from the DOE to the DOD. (See Appendix A for the text of this Resolution.) "'Too many questions can't be resolved at this time,' [House Education Chairman Rod Tam] said, such as whether the Department of Defense could afford to run the schools and whether the state could 'discriminate' against military children by not educating them."[6]

Legal Issues for the State of Hawaii

Transferring some of Hawaii's public schools to the control of the Department of Defense (DOD) could be problematic. There are various legal issues and questions that need to be taken into consideration.

First, the State is required by existing laws to provide educational services to all children. The State Constitution, Article X, section 1, provides for the statewide creation of a system of public schools. A public school education is also compulsory for all children between ages six and eighteen, with the exception of children enrolled in a private school or an alternative educational program such as home schooling.[7] Any measures that are taken to transfer a school could be considered an attempt to differentiate military students from the rest of the student population. Hence, it may appear to be discriminatory. Ultimate resolution of these issues may require litigation.

Secondly, federal laws generally leave the education of military dependents stationed in the United States and the territories to the local educational agencies.[8] Hence, children living on military bases are to be educated in schools operated and controlled by the local public school systems in accordance with state laws.

Ownership and Control of Hawaii's Public Schools

The transfer of the responsibility of some of Hawaii's public schools to the DOD is further complicated by the issue of determining ownership of the schools with a high enrollment of military dependents. Prior to 1965, the City and County of Honolulu financed, built, and managed the public schools on Oahu. Then in 1965, the legislature authorized the State to take over the planning, construction, and management of the public school system.[9] The counties retained the obligation of paying the interest and principal on the bonds that had been issued to finance the construction of the schools. Hence, the ownership of any school

facility built after 1965 usually resides with the State. However, any facility built before 1965 is usually owned by the County although it is now managed and maintained by the State.

A school structure can be owned by the county if constructed before 1965, by the State, or the federal government if federal funds were used for the construction. It is important to note that each structure on a school campus may have been added to the campus at a different time and under differing financial circumstances. Hence, one school may have an administration building built by the State after 1965, several portable classrooms owned by the County, and a cafeteria owned by the federal government.[10]

This type of diffuse ownership of school structures could complicate the transferral of public schools to the DOD if ownership of the structures becomes part of the transferral process.

Creation of a Section 6 Arrangement with the DOD

Some of these legal issues may be avoided through the creation of a Section 6 financial arrangement instead of the direct transferral of some of Oahu's schools to the DOD. The impact aid laws generally state that if there are no tax revenues available for the expenditure of free public education for federally-connected students, the Secretary of Defense may make arrangements to provide a free public education for these students that is comparable to the communities in which the students reside.[11] The State would file an application with the Secretary and if an arrangement were approved, the amount of funding provided by the DOD would be removed from other payments made to the DOE (in other words, loss of impact aid would result). Whether a school may enter a Section 6 arrangement is determined by the discretion of the Secretary of Defense. However, as discussed earlier in Chapter 3 of this study, the responsibility for stateside schools with past Section 6 arrangements are being returned to the local educational agencies.

Downsizing of the DOD and DOD School System

The collapse of the Soviet Union and the dissolution of the Eastern Bloc has led to the process of restructuring the United States defense apparatus. The end of the Cold War has resulted in the downsizing of the DOD and the DOD school systems both abroad and stateside. Congressional efforts to close the stateside school system are discussed in Chapter 3 of this study. However, the DOD is also closing schools abroad with Germany taking the largest reductions at the moment. By the end of 1992, there will be twenty fewer schools and 31,000 fewer students by 1994.[12]

The downsizing of the DOD in response to the end of the Cold War was begun by President Bush's administration. President-elect Clinton has also promised deep cuts in the United States defense budget. Therefore, Congress at this time may be unwilling to

appropriate the necessary additional funds required to establish the Section 6 schools on Hawaii's military bases.

Summary

Hawaii is not the only state that has received impact aid payments that do not cover the cost of educating federally-connected pupils. The federal government has not accepted full financial responsibility for federally-connected students in other states also. Both houses of the Illinois legislature responded last spring by passing a bill that allows certain school districts to petition the regional board of school trustees for the formation of new school districts. These new districts would be detached from the military bases. The petition cannot be denied by the regional board of school trustees. This bill has not been signed into law by the Governor of Illinois.

In the spring of 1992, the Hawaii legislature focused its attention on H.B. No. 2617. This bill sought to satisfy some military parents who were dissatisfied with the quality of educational services provided by Hawaii's public school system. The bill would have transferred administrative, organizational, managerial, and financial responsibility for certain schools located on military installations to the control of the DOD. The bill was killed by the House Committee on Education which decided instead to adopt a resolution exploring various issues surrounding a transfer.

The transfer of some of Oahu's schools to the control of the DOD involves various legal issues which could require constitutional amendments and which may ultimately be resolved only through litigation.

Unfortunately, historical circumstances do not favor either the transfer of any of Oahu's schools to the DOD or the creation of a Section 6 arrangement. The end of the Cold War has begun a period of deep financial cutbacks by Congress. These cutbacks, begun by President Bush, will probably continue under President-elect Clinton who has vowed to reduce military spending. The DOD is reducing its overseas school system, has attempted to shut down its stateside school system, and has begun transferring schools with Section 6 arrangements back to their local educational agencies. Hence, Congress will probably not view the creation of Section 6 schools in Hawaii in a positive light. And any creation of a Section 6 financial arrangement is dependent upon the discretion of the United States Secretary of Defense.

ENDNOTES

1. Chicago Tribune, May 14, 1992, p. II-1.
2. Ibid.
3. Ibid.
4. Voice of Business, February 24, 1992, p. 3.
5. Honolulu Advertiser, February 13, 1992, p. A-8.
6. Ibid.
7. Hawaii Rev. Stat., sec. 298-9 (1985).
8. 20 U.S.C.A. 241 (1990).
9. 1965, Hawaii Sess. Laws, Act 97.
10. Telephone interview with Rosalind Sueyoshi, Hawaii, Department of Education, Facilities Branch, August 19, 1992.
11. 20 U.S.C.A. 241 (1990).
12. Army Times, March 16, 1992, p. 43.

Chapter 6

FINDINGS AND RECOMMENDATIONS

Introduction

The primary focus of this chapter is to summarize the findings of this study and provide recommendations relating to the feasibility of transferring some of Hawaii's public schools from the state Department of Education (DOE) to the United States Department of Defense (DOD).

Findings

1. In 1992, Hawaii received approximately $22 million in impact aid. Impact aid payments are made to the State of Hawaii by the federal government in an effort to offset state costs in educating military family members whose parents offer a limited local tax base.

2. In fiscal year 1990-1991, Hawaii spent about $170 million in state funds to educate federally-connected children attending Hawaii's public schools. Despite increases in impact aid payments to the State, the cost of educating federally-connected students has increased steadily over the years resulting in the expenditure of state funds that has also risen steadily over the years. From fiscal years 1972-1973 to 1990-1991, based on average per pupil expenditures, state expenditures on students from military families exceeded impact aid receipts by a total of more than $1.8 billion.

3. Congress has appropriated less funding for the Impact Aid Program in 1993 than it did in 1992. This decreased appropriation will probably result in decreased payments to the states in 1993. Future funding may be further reduced through the possible elimination of payments for type "B" students.

4. The Impact Aid Program is due for reauthorization by Congress in 1993. Congress may choose to extend the program in its present form, modify the program, entirely rewrite the program, or eliminate it altogether by refusing to reauthorize it. Congressional efforts to reduce the federal deficit will undoubtedly lead congressional budget-cutters to examine closely all programs that are due for reauthorization.

5. The downsizing of the Department of Defense and the DOD school systems both on the mainland and abroad is taking place. Congressional budget-cutters have made a strong effort over the past few years to either close Section 6 mainland schools or return the schools to the control of their local educational agencies. This effort will probably continue under President-elect Clinton. Hence, Congress may not look favorably upon appropriating money for the transferral of some of Hawaii's schools from the control of the state DOE to the United States DOD.

6. The State of Hawaii cannot unilaterally require the United States to establish Section 6 schools or otherwise assume the responsibility for and the cost of educating the children of military families in Hawaii. It would appear that the only way in which the State could unilaterally attempt to "force" the issue would be to refuse to educate the children of certain military families and see whether the United States would "cave in" and either increase payments or establish its own facilities--or alternatively take some kind of retaliatory action against the State. However, before taking any action of this kind, it would appear necessary for the State to modify some of its basic educational policies, such as the provision in Article 10, Section 1 of the State Constitution providing for "the establishment, support, and control of a statewide system of public schools . . .", and the compulsory education laws.

7. The Leeward, Central, and Windward departmental school districts on the island of Oahu are now all classified as "Super A" districts for purposes of impact aid, thereby qualifying the State for the highest rate of reimbursement for students in those districts.

8. Assuming the federal government agreed to take over certain schools and operate them under the Section 6 program, the federal laws authorizing the program require that standards for Section 6 schools and Section 6 school arrangements be based on local comparability. Therefore, any Section 6 schools established for military family members in Hawaii would presumably be operated in a manner that would make them reasonably comparable to the state-run public schools of which certain parents have complained.

Recommendations

1. The reauthorization of the impact aid program by Congress is of crucial importance to the state DOE and the public school system. Impact aid payments are essential to the DOE budget, particularly in light of the State's present revenue situation. The Legislature should direct the DOE to work closely with Hawaii's congressional delegation to assure the reauthorization of the program in a manner that will be most beneficial to Hawaii. The department should make every effort to keep the congressional delegation apprised of its needs, and the implications of relevant proposals, particularly where Hawaii might be disadvantaged by virtue of its statewide school system throughout the reauthorization process. Assuming the system for calculating impact aid is reauthorized in a form similar to the present, then it will be important to have Hawaii's departmental (administrative) school districts continue to be treated as being comparable to local school districts in other states.

2. The Legislature should not take any direct action at this time to try to force the transfer of any of Hawaii's public schools from the administrative and managerial control of the state DOE to the United States DOD. If the Legislature feels strongly that at least some of Hawaii's public schools should be transferred to the United States DOD, then the Legislature should direct the DOE to actively explore whether and under what circumstances the United States would consent to such an assumption of responsibility. The Legislature should also request the assistance of Hawaii's congressional delegation in this endeavor.

The Legislature should realize, however, that even if such a transfer were accomplished, it may not provide any permanent solution. Congress has attempted to transfer the Section 6 schools to the local school districts, and some schools with Section 6 arrangements have been returned to the control of their local educational agencies. Transferring some of Hawaii's public schools to the control of the DOD will result in at least a certain amount of upheaval in the DOE's administrative and educational operations. This upheaval will be repeated if the Section 6 program is subsequently terminated and the schools must later be transferred back to the control of the DOE.

3. One way in which the State might be able to increase its allotment of impact aid (if only slightly) would be to modify the boundaries of the Honolulu departmental school district to place a greater number of the children of military families within the boundaries of the Central district. Because the Central district is classified as a "Super A" district while Honolulu is not, the rate of reimbursement for children in that district would be higher than for those in Honolulu.

The State should not, however, undertake any reorganization solely for the purpose of attempting to increase its share of impact aid payments. The reauthorization process that the Impact Aid Program faces this year may result in the criteria for making payments to the states being modified or completely changed--or the program could be terminated altogether. Any action taken now by the State would be premature.

The Legislature should direct the DOE to monitor the reauthorization process, and, upon its completion, report to the Legislature on any changes to the program, strategies that can be used by the State to maximize impact aid payments, and the costs, if any, to the State of implementing those strategies.

4. The dissatisfaction of some military parents with the quality of educational services provided by Hawaii's public school system is an insufficient reason for the Legislature to transfer control of some schools from the DOE to the DOD. The establishment of a Section 6 school in Hawaii is not likely to satisfy these parents because the law requires Section 6 schools to be based on standards that are comparable to the local public school system. Therefore, any Section 6 school established in Hawaii will provide educational services that are comparable to those provided by the Hawaii public school system.

The DOE should be directed to work with military authorities to ensure that military parents have ready access to information on the ways in which they can become involved in the public school system. While emphasis should be placed on the School/Community Based Management program, the information available should include the entire range of options, including service on the District School Advisory Councils to running for seats on the Board of Education.

Appendix A

STAND. COM. REP. NO. 1658-92

Honolulu, Hawaii
April 21, 1992

RE: H.R. No. 223
H.D. 2

Honorable Daniel J. Kihano
Speaker, House of Representatives
Sixteenth State Legislature
Regular Session of 1992
State of Hawaii

Sir:

Your Committee on Legislative Management, to which was referred H.R. No. 223, H.D. 1, entitled:

"HOUSE RESOLUTION REQUESTING THE LEGISLATIVE REFERENCE BUREAU, WITH THE ASSISTANCE OF THE DEPARTMENT OF EDUCATION, TO STUDY THE FEASIBILITY OF TRANSFERRING CERTAIN PUBLIC SCHOOLS TO THE UNITED STATES DEPARTMENT OF DEFENSE PURSUANT TO PUBLIC LAW 81-874,"

begs leave to report as follows:

The purpose of this resolution is to request that the Legislative Reference Bureau (LRB) with the assistance of the Department of Education (DOE), to study the feasibility of transferring certain public schools to the United States Department of Defense (U.S. DOD), pursuant to Public Law 81-874.

Testimony in support of the intent of this resolution was received from the DOE, however, the DOE has requested that the LRB be given the sole responsibility and latitude to conduct this study. Testimony was also received from the Military Affairs Council, a body within the Chamber of Commerce of Hawaii, which neither supported nor opposed this measure but voiced caution. Other individuals submitted testimony in support of the resolution.

Your Committee on Legislative Management believes that the amendment for a survey of the public's views on the proper use of impact aid funds is not germane, and has therefore deleted the amendment.

Your Committee on Legislative Management concurs with the intent and purpose of H.R. No. 223, H.D. 1, as amended herein, and recommends its adoption in the form attached hereto as H.R. No. 223, H.D. 2.

Respectfully submitted,

CAROL A. FUKUNAGA, Chair

CALVIN K.Y. SAY, Vice Chair

excused
PETER K. APO, Member

DENNIS ARAKAKI, Member

excused
DANIEL A. KIHANO, Member

excused
BRIAN T. TANIGUCHI, Member

WHITNEY T. ANDERSON, Member

MIKE O'KIEFFE, Member

HOUSE OF REPRESENTATIVES
SIXTEENTH LEGISLATURE, 1992
STATE OF HAWAII

H.R. NO. 223 H.D. 2

HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU, WITH THE ASSISTANCE OF THE DEPARTMENT OF EDUCATION, TO STUDY THE FEASIBILITY OF TRANSFERRING CERTAIN PUBLIC SCHOOLS TO THE UNITED STATES DEPARTMENT OF DEFENSE PURSUANT TO PUBLIC LAW 81-874.

WHEREAS, during fiscal year 1990-1991, the State provided for the establishment, support, and control of a statewide system of public schools at a cost of approximately $5,313 per student, based on an average daily enrollment of 171,337; and

WHEREAS, during this period, the State provided for the education of 36,145 military and federal students at a cost of approximately $192,000,000, based on a per student cost of $5,313; and

WHEREAS, during this period, the federal government provided approximately $22,500,000 in impact aid to the State, which averaged approximately $622 per student, based on an average daily enrollment of 36,145; and

WHEREAS, in Hawaii, approximately 15,000 children live and attend public schools located on military installations; and

WHEREAS, approximately twelve of these schools are attended exclusively by children living on military installations, while another six or so schools are attended predominantly by children living on military installations and, to a lesser degree, civilian children living near these installations; and

WHEREAS, Section 6 of Public Law 81-874, relating to impact aid, requires the United States Department of Defense (USDOD) to provide a free public education to all children residing on military installations in those instances where there are no tax revenues available from a state or community to pay for the education of these children; and

WHEREAS, pursuant to Public Law 81-874 and with an annual budget of $185,000,000, the USDOD operates sixty-eight schools on eighteen military installations, which serve 32,478 students and employ approximately 5,500 persons, at an average per pupil cost of $5,688, and an average teacher salary of $34,000, per year; and

WHEREAS, in Hawaii, the State provides for the establishment, support, and control of public schools, including those located on military installations, by constructing and maintaining school facilities, hiring teachers and staff and paying their salaries, and establishing curriculum requirements applicable to all students, including the mandatory study of Hawaiian culture and history; and

WHEREAS, Hawaii's public schools have a poor image among some military parents even before they arrive in the islands, and dissatisfied military parents have complained that (1) the State is using impact aid for purposes other than education, (2) the curriculum in Hawaii's public schools is not responsive to the needs of their children, and (3) public school facilities are poorly maintained; and

WHEREAS, on the other hand, some military parents have had satisfactory experiences with Hawaii's public schools and expressed their confidence in the teachers and administrators of the schools attended by their children; and

WHEREAS, military family members attending public schools located outside of military installations have participated fully in student activities in their schools, including student government, athletics, and other extracurricular activities; and

WHEREAS, public testimony on House Bill No. 2617, introduced during the Regular Session of 1992, attests to the existence of a society that accepts individuals without regard to their military affiliation and stresses the integration of civilian and military children in Hawaii's public schools; and

WHEREAS, despite these accepting and accommodating attitudes, some military and civilian children have had disappointing and unsatisfactory experiences in public schools with substantial civilian and military student bodies; and

WHEREAS, the Department of Education has introduced a number of programs to meet the special needs of military family members who experience cultural conflicts and personal stress when transferring to Hawaii's public school system from another state or country; and

WHEREAS, the Department of Education is currently grappling with the problem of meeting not only the special needs of public schools located on military installations but also the demands of other public schools at a time of diminishing fiscal resources; and

WHEREAS, the Task Force on School Governance has been holding public hearings and formulating recommendations to reform the State's centralized school system, including initiatives directed toward decentralization and the establishment of local control through the empowerment of individual schools and the creation of county school boards; now, therefore,

BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that the Legislative Reference Bureau, with the assistance of the Department of Education, is requested to study the feasibility of transferring certain public schools to the United States Department of Defense pursuant to Public Law 81-874, as part of the Department of Education's current attempts to reform and restructure the State's public school system; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to examine the operation and funding of schools operated by the United States Department of Defense on mainland military installations, as well as other United States Department of Defense schools on the mainland with substantial civilian and military student bodies; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to:

(1) Examine the different options for financing and governing public schools in Hawaii:

(A) Located on military installations and attended exclusively by military family members;

(B) Located on military installations and attended by children of both civilian and military families; and

(C) Located outside of military installations but attended predominantly by military family members;

and

(2) Examine ways to:

(A) Maximize the acquisition and use of state and federal funds, including impact aid, to operate these schools; and

(B) Organize these schools in keeping with the intent of school/community-based management, the recommendations of the Task Force on School Governance, and Public Law 81-874, with respect to the election of school boards to govern United States Department of Defense schools;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to:

(1) Examine the issue of school choice, as it relates specifically to military family members who wish to attend schools operated by the Department of Education rather than schools operated by the United States Department of Defense; and

(2) Examine options for providing military family members with the choice of attending either a school operated by the Department of Education or a school operated by the United States Department of Defense;

and

BE IT FURTHER RESOLVED that the Department of Education, as the agency in the State having control over education-related information, is requested to provide the following factual data in narrative form to the Legislative Reference Bureau for inclusion as a discrete chapter or portion thereof in this study, not later than September 15, 1992:

(1) The total cost of public schools in Hawaii located on military installations, from their initial construction to their present operation and maintenance, analyzed according to their respective operating expenses and capital costs, and interest, if financed by general obligation bonds;

(2) The identity of all public schools in Hawaii attended predominantly by children living on military installations, including the number of those children attending each school, regardless of whether or not these schools are located on military installations; and

(3) The annual operating cost of:

(A) Each public school in Hawaii located on military installations and attended exclusively by military family members;

(B) Each public school in Hawaii located on military installations and attended by children of both civilian and military families; and

(C) Each public school in Hawaii located outside of military installations but attended predominantly by military family members;

and

BE IT FURTHER RESOLVED that the Department of Education, the United States Department of Defense, the various military commands in Hawaii, The Chamber of Commerce of Hawaii, the Hawaii State Teachers Association, the Hawaii Government Employees Association, the parents and teachers at affected public schools, and all other interested groups and citizens, are requested to cooperate fully and unconditionally with the Legislative Reference Bureau in the conduct of this study; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit findings and recommendations to the Legislature not less than twenty days before the convening of the Regular Session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Chairperson of the Board of Education, the Superintendent of Education, and the Director of the Legislative Reference Bureau.

"Sec. 701. Each officer or employee compensated on a per annum basis, and occupying a permanent position within the scope of the compensation schedules fixed by this Act, who has not attained the maximum scheduled rate of compensation for the grade in which his position is placed, shall be advanced in compensation successively to the next higher rate within the grade at the beginning of the next pay period following the completion of (1) each fifty-two calendar weeks of service if his position is in a grade in which the step-increases are less than $200, or (2) each seventy-eight calendar weeks of service if his position is in a grade in which the step-increases are $200 or more, subject to the following conditions:

"(A) That no equivalent increase in compensation from any cause was received during such period, except increase made pursuant to section 702 or 1002;

"(B) That he has a current performance rating of 'Satisfactory' or better; and

"(C) That the benefit of successive step-increases shall be preserved, under regulations issued by the Commission for officers and employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency."

(b) Section 702 (a) of such Act [47] is amended by striking out "section 701 (a)" and inserting in lieu thereof "section 701".

Sec. 10. Section 703 (b) (2) of title VII of the Classification Act of 1949 (Public Law 429, Eighty-first Congress, approved October 28, 1949) [48] is hereby amended to read:

"(2) No officer or employee shall receive a longevity step-increase unless his current performance rating is 'satisfactory' or better."

Sec. 11. The following Acts or parts of Acts are hereby repealed:

(1) Section 4 of the Act of August 23, 1912 (37 Stat. 413); [49]

(2) The Act of July 31, 1946 (60 Stat. 751; 5 U.S.C. 669a); [50]

(3) Title IX of the Classification Act of 1949 (Public Law 429, Eighty-first Congress). [51]

Sec. 12. This Act shall take effect ninety days after the date of its enactment.

Sec. 13. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Sec. 14. All laws or parts of laws inconsistent herewith are hereby repealed to the extent of such inconsistency.

Approved September 30, 1950.

EDUCATIONAL AGENCIES—AREAS AFFECTED BY FEDERAL ACTIVITIES—FINANCIAL AID

See Legislative History, p. 4014

CHAPTER 1124—PUBLIC LAW 874

[H. R. 7940]

An Act to provide financial assistance for local educational agencies in areas affected by Federal activities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

DECLARATION OF POLICY

Section 1. In recognition of the responsibility of the United States for the impact which certain Federal activities have on the local educa-

47. 5 U.S.C.A. § 1122.
48. 5 U.S.C.A. § 1123.
49. 5 U.S.C.A. § 648.
50. 5 U.S.C.A. § 669a.
51. 5 U.S.C.A. §§ 1141, 1142.

tional agencies in the areas in which such activities are carried on, the Congress hereby declares it to be the policy of the United States to provide financial assistance (as set forth in the following sections of this Act) for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that—

(1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or

(2) such agencies provide education for children residing on Federal property; or

(3) such agencies provide education for children whose parents are employed on Federal property; or

(4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.

FEDERAL ACQUISITION OF REAL PROPERTY

Sec. 2. (a) Where the Commissioner, after consultation with any local educational agency and with the appropriate State educational agency, determines for the fiscal year beginning July 1, 1950, or for any of the three succeeding fiscal years—

(1) that the United States owns Federal property in the school district of such local educational agency, and that such property (A) has been acquired by the United States since 1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value of all real property in the school district (similarly determined as of the time or times when such Federal property was so acquired); and

(2) that such acquisition has placed a substantial and continuing financial burden on such agency; and

(3) that such agency is not being substantially compensated for the loss in revenue resulting from such acquisition by (A) other Federal payments, or (B) increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property so acquired,

then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Commissioner, is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property, to the extent such agency is not compensated for such burden by other Federal payments. Such amount shall not exceed the amount which, in the judgment of the Commissioner, such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard to any improvements or other changes made in or on such property since such acquisition), minus the amount which in his judgment the local educational agency derived from other Federal payments and had available in such year for current expenditures.

(b) For the purposes of this section—

(1) The term "other Federal payments" means payments in lieu of taxes, and any other payments, made with respect to Federal property pursuant to any law of the United States other than this Act.

(2) Any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933, as amended,[52] shall not be regarded as Federal property.

(c) Where the school district of any local educational agency shall have been formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at the time it files

52. 16 U.S.C.A. § 831l.

application under section 5) for any fiscal year to have (1) the eligibility of such local educational agency, and (2) the amount which such agency shall be entitled to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school district as the agency shall designate in such election.

CHILDREN RESIDING ON, OR WHOSE PARENTS ARE EMPLOYED ON, FEDERAL PROPERTY

Sec. 3. (a) For the fiscal year beginning July 1, 1950, and for each of the three succeeding fiscal years, each local educational agency which provides free public education during such year for children who reside on Federal property with a parent employed on Federal property shall be entitled to an amount equal to the number of such children in average daily attendance during such year at the schools of such agency, multiplied by the local contribution rate (determined under subsection (c)).

(b) For the fiscal year beginning July 1, 1950, and for each of the three succeeding fiscal years, each local educational agency of a State which provides free public education during such year for children who reside on Federal property, or who reside with a parent employed on Federal property part or all of which is situated in such State, shall be entitled to an amount equal to the number of such children in average daily attendance during such year at the schools of such agency, multiplied by one-half the local contribution rate (determined under subsection (c)). If both subsection (a) and this subsection apply to a child, the local educational agency shall elect which of such subsections shall apply to such child.

LOCAL CONTRIBUTION RATE

(c) The local contribution rate for a local educational agency for any fiscal year shall be computed by the Commissioner of Education, after consultation with the State educational agency and the local educational agency, in the following manner:

(1) he shall determine which school districts within the State are in his judgment most nearly comparable to the school district of the agency for which the computation is being made; and

(2) he shall then divide (A) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which he is making the computation, which the local educational agencies of such comparable school districts made from revenues derived from local sources, by (B) the aggregate number of children in average daily attendance to whom such agencies provided free public education during such second preceding fiscal year.

The local contribution rate shall be an amount equal to the quotient obtained under clause (2) of this subsection. If, in the judgment of the Commissioner, the current expenditures in those school districts which he has selected under clause (1) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in the school district of the local educational agency for which the computation is being made, a level of education equivalent to that maintained in such other districts, the Commissioner may increase the local contribution rate for such agency by such amount as he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors.

LIMITATIONS ON ELIGIBILITY; LIMITATIONS ON PAYMENT

(d) (1) No local educational agency shall be entitled to receive any payment for a fiscal year under subsection (a) or subsection (b), as the case may be, unless the number of children who are in average daily attendance during such year and to whom such subsection applies—

(A) is ten or more; and

(B) amounts to 3 per centum or more of the total number of children who are in average daily attendance during such year and for whom such agency provides free public education.

Notwithstanding the provisions of clause (B) of this paragraph, the Commissioner may waive the 3 per centum condition of entitlement contained in such clause whenever, in his judgment, exceptional circumstances exist which would make the application of such condition inequitable and would defeat the purposes of this Act.

(2) Notwithstanding the preceding provisions of this section, where the average daily attendance at the schools of any local educational agency during the fiscal year ending June 30, 1939, exceeded 35,000—

(A) such agency's percentage requirement for eligibility (as set forth in paragraph (1) of this subsection) shall be 6 per centum instead of 3 per centum (and those provisions of such paragraph (1) which relate to the lowering of the percentage requirement shall not apply); and

(B) in determining the amount which such agency is entitled to receive under subsection (a) or (b), the agency shall be entitled to receive payment with respect to only so many of the number of children whose attendance serves as the basis for eligibility under such subsection, as exceeds 3 per centum of the number of all children in average daily attendance at the schools of such agency during the fiscal year for which payment is to be made.

ADDITIONAL PAYMENTS DURING PERIOD IMMEDIATELY FOLLOWING IMPACT

(e) Where—

(1) a local educational agency is entitled under subsection (a) or (b) to receive a payment for any fiscal year with respect to the education of a child; and

(2) under State law, the eligibility of such agency for State aid with respect to the free public education of such child is determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local educational agencies for State aid with respect to the free public education of other children in the State; and

(3) such agency is not yet eligible to receive for such child part or all of such State aid,

the payment under subsection (a) or (b), as the case may be, shall be increased by an amount equal to the amount of State aid for which such agency is not yet eligible.

ADJUSTMENT FOR CERTAIN DECREASES IN FEDERAL ACTIVITIES

(f) Whenever the Commissioner determines that—

(1) a local educational agency has made preparations to provide during a fiscal year free public education to a certain number of children to whom subsection (a) or (b) applies; and

(2) such number has been substantially reduced by reason of a decrease in or cessation of Federal activities,

the amount to which such agency is otherwise entitled under this section for such year shall be increased to the amount to which, in the judgment of the Commissioner, such agency would have been entitled but for such decrease in or cessation of Federal activities, minus any reduction in current expenditures for such year which the Commissioner determines that such agency has effected, or reasonably should have effected, by reason of such decrease in or cessation of Federal activities.

CERTAIN FEDERAL CONTRIBUTIONS TO BE DEDUCTED

(g) In determining the total amount which a local educational agency is entitled to receive under this section for a fiscal year, the Commissioner shall deduct (1) such amount as he determines such agency derived from other Federal payments (as defined in section 2 (b) (1)) and had available in such year for current expenditures (but only to the extent such payments are not deducted under the last sentence of section 2 (a)), and (2) such amount as he determines to be the value of transportation

and of custodial and other maintenance services furnished such agency by the Federal Government during such year.

SUDDEN AND SUBSTANTIAL INCREASES IN ATTENDANCE

INCREASES HEREAFTER OCCURRING

Sec. 4. (a) If the Commissioner determines for the fiscal year beginning July 1, 1950, or for any of the three succeeding fiscal years—

(1) that, as the result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children in average daily attendance at the schools of any local educational agency has occurred in such fiscal year, which increase so resulting from activities of the United States is equal to at least 10 per centum of the number of all children in average daily attendance at the schools of such agency during the preceding three-year period; and

(2) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(3) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for the fiscal year for which the determination is made, and for each of the two succeeding fiscal years (but in no event for any fiscal year ending after June 30, 1954), an amount equal to the product of—

(A) the number of children which the Commissioner determines to be the increase in average daily attendance, so resulting from activities of the United States, in the fiscal year for which payment is to be made; and

(B) the amount which the Commissioner determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Commissioner determines to be available from Federal, State, and local sources for such purpose (not counting as available for such purpose either payments under this Act, or funds from local sources required to meet current expenditures necessary to provide free public education to other children).

The number of children which the Commissioner determines under clause (A) to be the increase in average daily attendance for any fiscal year shall not exceed the number of all children in average daily attendance at the schools of such agency during such year, minus the number of all children in average daily attendance at the schools of such agency during the preceding three-year period. The determination under clause (B) shall be made by the Commissioner after considering the current expenditures per child in providing free public education in those school districts within the State which, in the judgment of the Commissioner, are most nearly comparable to the school district of the local educational agency for which the computation is being made.

INCREASES HERETOFORE OCCURRING

(b) (1) If the Commissioner determines in any fiscal year ending before July 1, 1954,—

(A) that, as the result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children in average daily attendance at the schools of any local educational agency has occurred after June 30, 1939, and before July 1, 1950; and

(B) that the portion of such increase so resulting from activities of the United States which still exists in such fiscal year amounts to not less than 25 per centum (or to not less than 15 per centum where, in the judgment of the Commissioner, exceptional circumstances exist

which would make the application of the 25 per centum condition of entitlement inequitable and would defeat the purposes of this Act) of the number of all children in average daily attendance at the schools of such agency during the fiscal year ending June 30, 1939; and

(C) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(D) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for the fiscal year in which the determination is made, and for each succeeding fiscal year ending before July 1, 1954, an amount determined as follows: For the fiscal year ending June 30, 1951, 100 per centum of the product determined as provided in paragraph (2); for the fiscal year ending June 30, 1952, 75 per centum of such product; for the fiscal year ending June 30, 1953, 50 per centum of such product; and for the fiscal year ending June 30, 1954, 25 per centum of such product.

(2) The product referred to in paragraph (1) for a fiscal year shall be an amount equal to—

(A) the number of children which the Commissioner determines to be the increase in average daily attendance at the schools of such agency, so resulting from activities of the United States, which still exists in such fiscal year (determined as provided in clauses (A) and (B) of paragraph (1)); multiplied by

(B) the amount which the Commissioner determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Commissioner determines to be available from Federal, State, and local sources for such purpose (not counting as available for such purpose either payments under this Act, or funds from local sources required to meet current expenditures necessary to provide free public education to other children).

The number of children which the Commissioner determines under clause (A) to be the increase in average daily attendance which still exists in any fiscal year shall not exceed the number of all children in average daily attendance at the schools of such agency during such year, minus the number of all children in average daily attendance at the schools of such agency during the fiscal year ending June 30, 1939. The determination under clause (B) shall be made by the Commissioner after considering the current expenditures per child in providing free public education in those school districts within the State which, in the judgment of the Commissioner, are most nearly comparable to the school district of the local educational agency for which the computation is being made.

CERTAIN CHILDREN NOT TO BE COUNTED

(c) In determining under this section (1) whether there has been an increase in attendance in any fiscal year and whether any increase in attendance still exists in any fiscal year, and (2) the number of children with respect to whom payment is to be made for any fiscal year, the Commissioner shall not count—

(A) children with respect to whom a local educational agency is, or upon application would be, entitled to receive any payment under subsection (a) or (b) of section 3 for such fiscal year, and

(B) children whose attendance is attributable to activities of the United States carried on in connection with real property which has been excluded from the definition of Federal property by the last sentence of paragraph (1) of section 9.

LIMITATIONS ON ELIGIBILITY AND PAYMENT

(d) Notwithstanding the preceding provisions of this section, where the average daily attendance at the schools of any local educational agency during the fiscal year ending June 30, 1939, exceeded 35,000—

(1) such agency's percentage requirement for eligibility under subsection (a) shall be 15 per centum instead of 10 per centum, and its percentage requirement for eligibility under subsection (b) shall be 30 per centum instead of 25 per centum (and those provisions of subsection (b) (1) (B) which relate to the lowering of the percentage requirement shall not apply); and

(2) in determining the amount which such agency is entitled to receive under subsection (a) or (b), the agency shall be entitled to receive payment with respect to only so many of the number of children for whom the agency would otherwise be entitled to receive payment under such subsection, as exceeds (A) in the case of subsection (a), 10 per centum of the number of all children in average daily attendance at the schools of such agency during the fiscal year for which payment is to be made, or (B) in the case of subsection (b), 25 per centum of all children so in average daily attendance.

CONSULTATION WITH STATE AND LOCAL AUTHORITIES

(e) All determinations of the Commissioner under this section shall be made only after consultation with the State educational agency and the local educational agency.

METHOD OF MAKING PAYMENTS

APPLICATION

Sec. 5. (a) No local educational agency shall be entitled to any payment under section 2, 3, or 4 of this Act for any fiscal year except upon application therefor, submitted through the State educational agency and filed in accordance with regulations of the Commissioner, which application gives adequate assurance that the local educational agency will submit such reports as the Commissioner may reasonably require to determine the amount to which such agency is entitled under this Act.

CERTIFICATION AND PAYMENT

(b) The Commissioner shall, for each calendar quarter, certify to the Secretary of the Treasury for payment to each local educational agency, either in advance or by way of reimbursement, the amount which the Commissioner estimates such agency is entitled to receive under this Act for such quarter. The amount so certified for any quarter shall be reduced or increased, as the case may be, by any sum by which he finds that the amount paid to the agency under this Act for any prior quarter was greater or less than the amount which should have been paid to it for such prior quarter. Upon receipt of such certification, the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, pay to the local educational agency in accordance with such certification.

ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS

(c) If the funds appropriated for a fiscal year for making the payments provided in this Act are not sufficient to pay in full the total amounts to which all local educational agencies are entitled, the Commissioner shall reduce the amounts which he certifies under subsection (b) for such year for payment to each local educational agency by the percentage by which the funds so appropriated are less than the total necessary to pay to such agencies the full amount to which they are entitled under this Act.

CHILDREN FOR WHOM LOCAL AGENCIES ARE UNABLE TO PROVIDE EDUCATION

Sec. 6. In the case of children who reside on Federal property—

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Commissioner shall make such arrangements (other than arrangements with respect to the acquisition of land, the erection of facilities, interest, or debt service) as may be necessary to provide free public education for such children. To the maximum extent practicable, such education shall be comparable to free public education provided for children in comparable communities in the State.

ADMINISTRATION

Sec. 7. (a) In the administration of this Act, no department, agency, officer, or employee of the United States shall exercise any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or State educational agency.

(b) The Commissioner shall administer this Act, and he may make such regulations and perform such other functions as he finds necessary to carry out the provisions of this Act.

(c) The Commissioner shall include in his annual report to the Congress a full report of the administration of his functions under this Act, including a detailed statement of receipts and disbursements.

USE OF OTHER FEDERAL AGENCIES; TRANSFER AND AVAILABILITY OF APPROPRIATIONS

Sec. 8. (a) In carrying out his functions under this Act, the Commissioner is authorized, pursuant to proper agreement with any other Federal department or agency, to utilize the services and facilities of such department or agency, and, when he deems it necessary or appropriate, to delegate to any officer or employee thereof the function under section 6 of making arrangements for providing free public education. Payment to cover the cost of such utilization or of carrying out such delegated function shall be made either in advance or by way of reimbursement, as may be provided in such agreement.

(b) All Federal departments or agencies administering Federal property on which children reside, and all such departments or agencies principally responsible for Federal activities which may occasion assistance under this Act, shall to the maximum extent practicable comply with requests of the Commissioner for information he may require in carrying out the purposes of this Act.

(c) Such portion of the appropriations of any other department or agency for the fiscal year ending June 30, 1951, as the Director of the Bureau of the Budget determines to be available for the same purposes as this Act, shall, except to the extent necessary to carry out during such year contracts made prior to the enactment of this Act, be transferred to the Commissioner for use by him in carrying out such purposes.

(d) No appropriation to any department or agency of the United States, other than an appropriation to carry out this Act, shall be available during the period beginning July 1, 1951, and ending June 30, 1954, for the same purposes as this Act, except that nothing in this subsection or in subsection (c) of this section shall affect the availability of appropriations for the maintenance and operation of school facilities on Federal property under the control of the Atomic Energy Commission.

DEFINITIONS

Sec. 9. For the purposes of this Act—

(1) The term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes real property leased from the Secretary of the Army, Navy, or Air Force under section 805 of the National Housing Act, as amended,[53] for the purpose of title VIII of such Act.[54] Such term also includes real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States. Such term does not include (A) any real property used by the United States primarily for the provision of services to the local area in which such property is situated, (B) any real property used for a labor supply center, labor home, or labor camp for migratory farm workers, or (C) any low-rent housing project held under title II of the National Industrial Recovery Act,[55] the Emergency Relief Appropriation Act of 1935, the United States Housing Act of 1937,[56] the Act of June 28, 1940 (Public Law 671 of the Seventy-sixth Congress),[57] or any law amendatory of or supplementary to any of such Acts.

(2) The term "child" means any child who is within the age limits for which the applicable State provides free public education. Such term does not include any child who is a member, or the dependent of a member, of any Indian tribal organization, recognized as such under the laws of the United States relating to Indian affairs, and who is eligible for educational services provided pursuant to a capital grant by the United States, or under the supervision of, or pursuant to a contract or other arrangement with, the Bureau of Indian Affairs.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The term "current expenditures" means expenditures for free public education to the extent that such expenditures are made from current revenues, except that such term does not include any such expenditure for the acquisition of land, the erection of facilities, interest, or debt service.

(6) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public education.

(7) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(8) The term "State" means a State, Alaska, Hawaii, Puerto Rico, or the Virgin Islands.

(9) The terms "Commissioner of Education" and "Commissioner" means the United States Commissioner of Education.

(10) Average daily attendance shall be determined in accordance with State law; except that, notwithstanding any other provision of this Act, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school dis-

53. 12 U.S.C.A. § 1748d.
54. 12 U.S.C.A. §§ 1748–1748g.
55. 40 U.S.C.A. § 401 et seq.
56. 42 U.S.C.A. § 1401 et seq.
57. 50 U.S.C.A.Appendix, § 1151 et seq.

trict, for purposes of this Act the attendance of such child at such school shall be held and considered (A) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such tuition payment under the contract.

Approved September 30, 1950.

DISASTERS—STATES AND LOCAL GOVERNMENTS—FEDERAL AID

See Legislative History, p. 4023

CHAPTER 1125—PUBLIC LAW 875

[H. R. 8396]

An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

It is the intent of Congress to provide an orderly and continuing means of assistance by the Federal Government to States and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, to repair essential public facilities in major disasters, and to foster the development of such State and local organizations and plans to cope with major disasters as may be necessary.

Sec. 2. As used in this Act, the following terms shall be construed as follows unless a contrary intent appears from the context:

(a) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship, or suffering caused thereby, and respecting which the governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance under this Act, and shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe;

(b) "United States" includes the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(c) "State" means any State in the United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(d) "Governor" means the chief executive of any State;

(e) "Local government" means any county, city, village, town, district, or other political subdivision of any State, or the District of Columbia;

(f) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, excepting, however, the American National Red Cross.

Sec. 3. In any major disaster, Federal agencies are hereby authorized when directed by the President to provide assistance (a) by utilizing or lending, with or without compensation therefor, to States and local governments their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act; (b) by distributing, through the American National Red Cross or otherwise, medicine, food, and other consumable supplies; (c) by donating to States and local governments equipment and supplies determined

Source Pub L No 874, 81st Cong , 2nd Sess (September 30, 1950)

Appendix C

TABLE OF CLASSIFICATIONS

64 Stat. at Large			U.S.Code and U.S.C.A.	
Chap.	Pub.Law	Sec.	Title	Sec.
1093	856	4(a)	46	1274(a) (2)
1093	856	4(b)	46	1274(a) (7)
1093	856	4(c)	46	1274(a) (8)
1094	857	—	50 App.	40
1107	858	—	49	460
1108	859	1	50 App.	32(a) (2) (D)
1108	859	2	50 App.	6 note
1109	860	—	46	599(b)
1111	862	—	50	329(a)
1112	863	1	50	324(d)
1112	863	2	50	352
1115	865	1	18	4201
1115	865	2	18	prec. § 5003, 5005–5024
1115	865	3(a)	18	4201 note
1115	865	3(b)	18	5005 note
1115	865	4	18	5002
1115	865	5	18	prec. § 5001
1116	866	—	50 App.	2005(c) (4)
1117	867	1	49	1181
1117	867	2	49	1182
1117	867	3	49	1183
1117	867	4	49	1184
1117	867	5	49	1185
1117	867	6, 7	49	1181 note
1119	869	1	19	1001, par. 301 note
1119	869	1	26	3425 note
1119	869	2	19	1001, par. 301 note
1119	869	2	26	3425 note
1123	873	1	5	2001 note
1123	873	2	5	2001
1123	873	3	5	2002
1123	873	4	5	2003
1123	873	5	5	2004
1123	873	6	5	2005
1123	873	7	5	2006
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1123	873	9(b)	5	1122(a)
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SUBCHAPTER I—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

§§ 231 to 235. Omitted

HISTORICAL AND STATUTORY NOTES

Codifications

Sections, Act Sept. 10, 1949, c. 582, 63 Stat. 697, related to Federal aid to local school agencies to provide educational opportunities to children in federally affected areas, received appropriations of $7,500,000 only for the fiscal year 1950. See section 236 et seq. of this title, and, also, section 631 et seq. of this title.

§ 236. Congressional declaration of policy; authorization of appropriations

(a) In recognition of the responsibility of the United States for the impact which certain Federal activities have on the local educational agencies in the areas in which such activities are carried on, the Congress declares it to be the policy of the United States to provide financial assistance (as set forth in this subchapter) for those local educational agencies upon which the United States has placed financial burdens by reason of the fact that—

(1) the revenues available to such agencies from local sources have been reduced as the result of the acquisition of real property by the United States; or

(2) such agencies provide education for children residing on Federal property; or

(3) such agencies provide education for children whose parents are employed on Federal property; or

(4) there has been a sudden and substantial increase in school attendance as the result of Federal activities.

(b) There are authorized to be appropriated $735,000,000 for fiscal year 1989, $785,000,000 for fiscal year 1990, $835,000,000 for fiscal year 1991, $885,000,000 for fiscal year 1992, and $935,000,000 for fiscal year 1993, to carry out the provisions of this chapter.

(Sept. 30, 1950, c. 1124, Title I, § 1, formerly § 1, 64 Stat. 1100, renumbered and amended Apr. 11, 1965, Pub. L. 89-10, Title I, § 2, 79 Stat. 27; Apr. 28, 1988, Pub.L. 100-297, Title II, § 2012(b), 102 Stat. 294.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1950 Act. Senate Report No. 2458 and Conference Report No. 3109, see 1950 U.S.Code Cong. Service, p. 4014.

1965 Act. Senate Report No. 146, see 1965 U.S.Code Cong. and Adm.News, p. 1446.

1988 Act. Senate Report No. 100-222 and House Conference Report No. 100-567, see 1988 U.S.Code Cong. and Adm.News, p. 101.

where jurisdiction of grounds had been ceded by the Commonwealth to the United States. Schwartz v. O'Hara Tp. School Dist., 1953, 100 A.2d 621, 375 Pa. 440.

5. Teachers

Teachers employed under this subchapter were not "teaching staff members" within the meaning of the teacher tenure statute and thus were not entitled to acquire tenure, where unlike the regular teaching staff, they were hired annually without written contract and were paid on an hourly basis, and where though they performed duties functionally similar to those of other teachers, they were restricted to the program under this subchapter and acted primarily as tutors giving individual remedial aid to the children. Point Pleasant Beach Teachers Ass'n v. Callam, 1980, 412 A.2d 1352, 173 N.J.Super. 11, certification denied 420 A.2d 1296, 84 N.J. 469.

6. Persons entitled to maintain action

Plaintiff taxpayers who alleged that State's equalization formula denied substantial amount of state aid to school districts within which plaintiff taxpayers resided and paid taxes alleged sufficient personal stake in outcome of controversy to afford them standing to assert constitutional challenge to such formula, and plaintiff students enrolled in the impacted school districts also had such standing. Gwinn Area Community Schools v. State of Mich., D.C.Mich.1983, 574 F.Supp. 736, affirmed in part, reversed in part on other grounds 741 F.2d 840.

7. Review

District court had jurisdiction to review alleged abuse of discretion by Secretary of Health, Education, and Welfare in paying funds to local school district under this subchapter and § 631 et seq. of this title. School Bd. of Okaloosa County v. Richardson, D.C.Fla.1971, 332 F.Supp. 1263.

§ 237. Federal contributions

(a) Federal acquisition of property within school district as financial burden entitling for contribution

Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for any fiscal year ending prior to October 1, 1993—

(1) that the United States owns Federal property in the school district of such local educational agency, and that such property (A) has been acquired by the United States since 1938, (B) was not acquired by exchange for other Federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value of all real property in the school district (similarly determined as of the time or times when such Federal property was so acquired); and

(2) that such acquisition has placed a substantial and continuing financial burden on such agency; and

(3) that such agency is not being substantially compensated for the loss in revenue resulting from such acquisition by increases in revenue accruing to the agency from the carrying on of Federal activities with respect to the property so acquired,

then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Secretary, is

equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property. Such amount shall not exceed the amount which, in the judgment of the Secretary, such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard to any improvements or other changes made in or on such property since such acquisition). In making the determination of the amount that would have been derived in such year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies or imputed for fiscally dependent local educational agencies to the current annually determined aggregate assessed value of such acquired Federal property.

(b) Property excluded

For the purposes of this section any real property with respect to which payments are being made under section 831*l* of Title 16 shall not be regarded as Federal property.

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(c) School district consolidations

Where the school district of any local educational agency shall have been formed at any time after 1938 by the consolidation of two or more former school districts, such agency may elect (at the time it files application under section 240 of this title) for any fiscal year to have (1) the eligibility of such local educational agency, and (2) the amount which such agency shall be entitled to receive, determined under this section only with respect to such of the former school districts comprising such consolidated school district as the agency shall designate in such election.

(d) Payments attributable to incorrect assessed value determination

Any payment made to a local educational agency for any fiscal year prior to 1987 that is attributable to an incorrect determination under subsection (a)(1)(C) of this section shall be deemed to have been made in accordance with such subsection.

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(Sept. 30, 1950, c. 1124, Title I, § 2, formerly § 2, 64 Stat. 1101; Aug. 8, 1953, c. 402, § 1, 67 Stat. 530; Aug. 12, 1955, c. 868, § 1, 69 Stat. 713; Aug. 3, 1956, c. 915, Title II, § 201, 70 Stat. 970; Aug. 12, 1958, Pub.L. 85–620, Title II, § 201, 72 Stat. 559; Oct. 3, 1961, Pub.L. 87–344, Title I, § 102(a), 75 Stat. 759; Dec. 18, 1963, Pub.L. 88–210, Title III, § 302, formerly § 32, 77 Stat. 419, renumbered Oct. 16, 1968, Pub.L. 90–576, Title I, § 101(a)(1), 82 Stat. 1064; Oct. 16, 1964, Pub.L. 88–665, Title XI, § 1102(a), 78 Stat. 1109; renumbered and amended Apr. 11, 1965, Pub.L. 89–10, Title I, §§ 2, 5, 79 Stat. 27, 36; Jan. 2, 1968, Pub.L. 90–247, Title II, § 204(a)–(c), Title III, § 301(e), 81 Stat. 808, 813; Apr. 13, 1970, Pub.L. 91–230, Title II, § 201(b),

the district was a permissible construction of the statute, which provided that a local school district can receive federal impact aid when assessed value of the federal property in school district aggregates 10% or more of the assessed value of all real property in the district. Bayonne School Bd. v. U.S. Dept. of Educ., D.D.C.1986, 640 F.Supp. 470, affirmed 813 F.2d 1254, 259 U.S.D.C. 133.

2. Current expenditures

Under this section providing for acceptance of federal funds by a town, and for their disbursement for current expenditures of the school system, "current expenditures" refer to those itemized school costs listed by school finance committee in its proposed annual budget. Harvey v. Town of Sudbury, 1966, 214 N.E.2d 718, 350 Mass. 312.

3. Items within school budget

Federal funds received or anticipated pursuant to this section providing for financial assistance to local educational agencies in areas affected by federal activities must be taken into consideration in preparing local school committee's budget, and school committee could not expend funds for items which were not included in budget originally submitted to town meeting for appropriation. Harvey v. Town of Sudbury, 1966, 214 N.E.2d 718, 350 Mass. 312.

§ 238. Payments to local school agencies

(a) Children of persons who reside and work on Federal property; parent in uniformed services; residents of Indian lands

For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools, resided on Federal property and—

(1) did so with a parent employed on Federal property situated (A) in whole or in part in the county in which the school district of such agency is located, or (B) if not in such county, in whole or in part in the same State as the school district of such agency; or

(2) had a parent who was on active duty in the uniformed services (as defined in section 101 of Title 37).

In making a determination under clause (2) of the preceding sentence with respect to a local educational agency for any fiscal year, the Secretary shall include the number of children who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such year, and who, while in attendance at such schools, resided on Indian lands, as described in clause (A) of section 244(1) of this title.

(b) Children of persons who reside or work on Federal property, who are on active duty in uniformed services, or who are refugees

For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year

ending prior to October 1, 1993, the Secretary shall, in addition to any determination made with respect to such agency under subsection (a) of this section, determine the number of children (other than children with respect to whom a determination is made for such fiscal year under subsection (a) of this section) who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year and who, while in attendance at such schools, either—

(1) resided on Federal property, or

(2) resided with a parent employed on Federal property situated (A) in whole or in part in the county in which the school district of such agency is located, or in whole or in part in the school district of such agency if the school district is located in more than one county, or (B) if not in such county or district, in whole or in part in the same State as the school district of such agency, or

(3) had a parent who was on active duty in the uniformed services (as defined in section 101 of Title 37).

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For such purpose, with respect to a local educational agency, in the case of any fiscal year ending prior to October 1, 1993, the Secretary shall also determine the number of children (other than children to whom subsection (a) of this section or the preceding sentence applies) who were in average daily attendance at the schools of such agency and for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools resided with a parent who was, at any time during the three-year period immediately preceding the beginning of the fiscal year for which the determination is made, a refugee who meets the requirements of clauses (A) and (B) of section 2601(b)(3) of Title 22, except that the Secretary shall not include in his determination under this sentence for any fiscal year any child with respect to whose education a payment was made under section 2601(b)(4) of Title 22.

(c) Eligibility for payments; waiver of paragraph (1)(B) requirement

(1) Except as is provided in paragraph (2), no local educational agency shall be entitled to receive a payment for any fiscal year with respect to a number of children determined under subsection (a) and subsection (b) of this section, unless the number of children so determined with respect to such agency amounts to—

(A) at least four hundred such children; or

(B) a number of such children which equals at least 3 per centum of the total number of children who were in average daily attendance, during such year, at the schools of such

agency and for whom such agency provided free public education;

whichever is the lesser.

(2)(A)(I) If a local educational agency is eligible for a payment for any fiscal year by the operation of clause (B) of paragraph (1), it shall continue to be so eligible for the two succeeding fiscal years even if such agency fails to meet the requirement of such clause (B) during such succeeding fiscal years, except that the number of children determined for the second such succeeding fiscal year with respect to such agency for the purpose of any clause in paragraph (1) of subsection (d) of this section shall not exceed 50 per centum of the number of children determined with respect to such agency for the purpose of that clause for the last fiscal year during which such agency was so eligible.

(II) If the Secretary determines with respect to any local educational agency for any fiscal year that—

(I) such agency does not meet the requirement of clause (B) of paragraph (1); and

(II) the application of such requirement, because of exceptional circumstances, would defeat the purposes of this subchapter;

the Secretary is authorized to waive such requirement with respect to such agency.

(B) No local educational agency shall be entitled to receive a payment for any fiscal year with respect to a number of children determined under the second sentence of subsection (b) of this section unless the number of children so determined constitutes at least 20 per centum of the total number of children who were in average daily attendance at the schools of such agency and for whom such agency, during such fiscal year, provided free public education.

(d) Amount of payments; special education programs, entitlement; criteria; local contribution rate; formula; special determination for territories; "handicapped children", "State", and "average per pupil expenditure" defined

(1) Except as is provided in paragraph (2), the amount to which a local educational agency shall be entitled under this section for any fiscal year shall be—

(A) in the case of any local educational agency with respect to which the number of children is determined under subsection (a) of this section an amount equal to 100 per centum of the local contribution rate multiplied by the number of chil-

dren determined under such subsection plus the product obtained with respect to such agency under subparagraph (B); and

(B) in any other case, an amount equal to 25 per centum of the local contribution rate multiplied by the number of children determined with respect to such agency for such fiscal year under subsection (b) of this section.

(2)(A) For any fiscal year after September 30, 1988, the total amount of payments under subparagraph (B) may not exceed $20,000,000.

(B) If the Secretary determines that—

(I) the amount of payment resulting from paragraph (1), as is otherwise provided in this subsection with respect to any local educational agency for any fiscal year, together with the funds available to such agency from State and local sources and from other sections of this subchapter, determined in accordance with subparagraph (E), is less than the amount necessary to enable such agency to provide a level of education equivalent to the State average during the preceding fiscal year or to the average of that maintained during the preceding fiscal year in three or more of the school districts of the State which are generally comparable to the school district of such agency, whichever is higher, increased or decreased, as the case may be, in the same percentage as the cost of such level of education increased or decreased from the second preceding fiscal year to the prior fiscal year;

(II) such agency is making a reasonable tax effort and exercising due diligence in availing itself of State and other financial assistance;

(III) not less than 50 per centum of the total number of children who were in average daily attendance at the schools of such agency during such fiscal year and for whom such agency provided free public education were, during such fiscal year, determined under either subsection (a) or subsection (b) of this section, or both; and

(Iv) the eligibility of such agency under State law for State aid with respect to free public education of children residing on Federal property, and the amount of such aid, are determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local educational agencies for State aid, and the amount thereof, with respect to the free public education of other children in the State;

the Secretary shall increase the actual payment to be made pursuant to the amount computed under paragraph (1) with respect to

such agency for such fiscal year to the extent necessary to enable such agency to provide a level of education equivalent to that maintained in such comparable school districts. The increase computed under this subparagraph shall be sufficient to allow the school district of the local educational agency to provide a level of education (calculated in accordance with this subparagraph) equal to the average of the three comparable districts in the State or the State average, whichever is greater, as described in clause (i). For the purpose of clause (ii), the Secretary shall determine that a reasonable tax effort has been made if the tax rate of the agency in the year for which the determination is made is an amount that is at least equal to 95 percent of the average tax rate for general fund purposes of comparable school districts for such fiscal year. Coterminous military districts shall be deemed to meet the requirement of such reasonable tax effort. Except for coterminous military districts, payments made to any agency under this subparagraph in any fiscal year shall be reduced by the percentage that the average tax rate for operational purposes of the comparable school districts or, if none, the State average tax rate, exceeds the tax rate of such agency. Subject to the provisions of subsection (h) of this section, the Secretary shall not, under the preceding sentence, increase the amount computed under paragraph (1) with respect to any local educational agency for any fiscal year to an amount which exceeds the product of—

(I) the amount the Secretary determines to be the cost per pupil of providing a level of education maintained in such comparable school districts during such fiscal year,

multiplied by—

(II) the number of children determined with respect to such agency for such year under either subsection (a) or subsection (b) of this section, or both,

minus the amount of State aid which the Secretary determines to be available with respect to such children for the fiscal year for which the computation is being made. In carrying out the provisions of this subparagraph, the Secretary shall count the actual number of children with respect to such agency for each fiscal year under subsection (b) of this section without regard to the provisions of subparagraph (E) of this paragraph.

(C)(I) The amount of the entitlement of any local educational agency under this section for any fiscal year with respect to handicapped children and children with specific learning disabilities for whom a determination is made under subsection (a)(2) or (b)(3) of this section and for whom such local educational agency is providing a program designed to meet the special educational and related

needs of such children shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 150 per centum.

(II) For the purposes of division (i), programs designed to meet the special educational and related needs of such children shall be consistent with criteria established under division (iii).

(III) The Secretary shall by regulation establish criteria for assuring that programs (including preschool programs) provided by local educational agencies for children with respect to whom this subparagraph applies are of sufficient size, scope, and quality (taking into consideration the special educational needs of such children) as to give reasonable promise of substantial progress toward meeting those needs, and in the implementation of such regulations the Secretary shall consult with persons in charge of special education programs for handicapped children in the educational agency of the State in which such local educational agency is located.

(Iv) For the purpose of this subparagraph the term "handicapped children" has the same meaning as specified in section 1401(1) of this title and the term "children with specific learning disabilities" has the same meaning as specified in section 1401(15) of this title.

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(D) The amount of the entitlements of any local educational agency under this section for any fiscal year with respect to children who, while in attendance at such agency, resided on Indian lands, as described in clause (A) of section 244(1) of this title, shall be the amount determined under paragraph (1) with respect to such children for such fiscal year multiplied by 125 per centum. Funds received under this section may be used to pay tuition for any student not eligible for funding under section 2008 of Title 25 in any school receiving fundlng under such section. No condition involving program or personnel shall apply to any such payments.

(E) For the purpose of subparagraph (B)(i) of this paragraph—

(I) available funds may not include any cash balance at the end of a year allowed under State law; or

(II) whenever no State law governing cash balance exists, available funds may not include 30 percent of the local educational agency's operating costs.

(3)(A) Except as is provided in subparagraph (B), in order to compute the local contribution rate for a local educational agency for any fiscal year, the Secretary, after consulting with the State educational agency of the State in which the local educational agency is located and with the local educational agency, shall determine which school districts within such State are generally comparable to the school district of the local educational agency for

which the computation is being made. The local contribution rate for such agency shall be the quotient of—

(I) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made, which the local educational agencies of such comparable school districts derived from local sources,

divided by–

(II) the aggregate number of children in average daily attendance for whom such agency provided free public education during such second preceding fiscal year.

(B)(I) The local contribution rate for a local educational agency in any State shall not be less than—

(I) 50 per centum of the average per pupil expenditure in such State, or

(II) 50 per centum of such expenditures in all the States,

whichever is greater, except that clause (II) shall not operate in such a manner as to make the local contribution rate for any local educational agency in any State exceed an amount equal to the average per pupil expenditure in such State.

(II) If the current expenditures in those school districts which the Secretary has determined to be generally comparable to the school district of the local educational agency for which a computation is made under subparagraph (A) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in the school district of such agency, a level of education equivalent to that maintained in such other school districts, the Secretary shall increase the local contribution rate for such agency by such an amount which he determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographical factors.

(III) The local contribution rate for any local educational agency in—

(I) Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, or

(II) any State in which a substantial proportion of the land is in unorganized territory, or

(III) any State in which there is only one local education agency,

shall be determined for any fiscal year by the Secretary in accordance with policies and principles which will best achieve the purposes of this section and which are consistent with the policies and principles provided in this paragraph for determining local contribution rates in States where it is possible to determine generally comparable school districts.

(C) The local contribution rate for a local educational agency shall include current expenditures from that portion of a real property tax required to be levied, collected, and distributed to local educational agencies by county governments pursuant to State law where the remainder of such real property tax is transferred to the State.

(D) For the purposes of this paragraph—

(I) the term "State" does not include Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands; and

(II) the "average per pupil expenditure" in a State shall be (I) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the computation is made of all local educational agencies in the State, divided by (II) the aggregate number of children in average daily attendance for whom such agencies provide free public education during such second preceding fiscal year.

(e) Adjustment for certain decreases in Federal activities

Whenever the Secretary determines that-

(1) for any fiscal year, the number of children determined with respect to any local educational agency under subsections (a) and (b) of this section is less than 90 per centum of the number so determined with respect to such agency during the preceding fiscal year;

(2) there has been a decrease or cessation of Federal activities within the State in which such agency is located; and

(3) such decrease or cessation has resulted in a substantial decrease in the number of children determined under subsections (a) and (b) of this section with respect to such agency for such fiscal year;

the amount to which such agency is entitled for such fiscal year and for any of the three succeeding fiscal years shall not be less than 90 per centum of the amount to which such agency was so entitled for the preceding fiscal year. That part of any entitlement of any local

educational agency which is in excess of the amount which such entitlement would be without the operation of the preceding sentence shall be deemed to be attributable to determinations of children with respect to such agency under subsection (b)(2)(A) of this section.

(f) Determinations on basis of estimates

Determinations with respect to a number of children by the Secretary under this section for any fiscal year shall be made, whenever actual satisfactory data are not available, on the basis of estimates. No such determination shall operate, because of an underestimate, to deprive any local educational agency of its entitlement to any payment (or the amount thereof) under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

(g) Spending vote requirement prohibited

Notwithstanding any other provisions of this chapter, no State may require that a vote of the qualified electors of a heavily impacted school district of a local educational agency be held to determine if such school district will spend the amounts to which the local educational agency is entitled under this chapter.

(h) Special provisions

(1) Any local educational agency for which the boundaries of the school district of such agency are coterminous with the boundaries of a military installation and which is not eligible to receive payments under subsection (d)(2)(B) of this section shall receive 100 percent of the amounts to which such agency is entitled under subsection (a) of this section.

(2) For the fiscal year beginning October 1, 1987, and for each year thereafter, the local contribution rate for coterminous local educational agencies under paragraph (1) shall be not less than 70 per centum of the average per pupil expenditure in all States during the second preceding year prior to the fiscal year for which the determination is made unless such payment would raise the per pupil expenditure above the average for that State. Whenever the preceding sentence applies, the local contribution rate may not be less than the amount necessary to raise the per pupil expenditure for that district to the average per pupil expenditure for the State in which such agency is located. The first 2 sentences of this paragraph shall not apply for local educational agencies in any State in which the State equalization law would prohibit the local educational agency from retaining such additional funds or in which State law would require that the State contribution would be reduced in

proportion to such additional funds. The local contribution rate for local educational agencies under this paragraph may not be less than 50 per centum of the average per pupil expenditure in all States during the second preceding fiscal year prior to the fiscal year for which the determination is made.

Sept. 30, 1950, c. 1124, Title I, § 3, formerly § 3, 64 Stat. 1102; Aug. 8, 1953, c. 402, § 2, 67 Stat. 530; Aug. 12, 1955, c. 868, § 1, 69 Stat. 713; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; Aug. 3, 1956, c. 915, Title II, §§ 202–206, 70 Stat. 970, 971; Aug. 12, 1958, Pub.L. 85–620, Title II, § 202, 72 Stat. 559; June 25, 1959, Pub.L. 86–70, § 18(d)(1)–(3), 73 Stat. 144; July 12, 1960, Pub.L. 86–624, § 14(d)(1)–(3), 74 Stat. 414; Oct. 3, 1961, Pub.L. 87–354, Title I, § 102(a), 75 Stat. 759; Dec. 18, 1963, Pub.L. 88–210, Title III, § 302, formerly § 32, 77 Stat. 419, renumbered Oct. 16, 1968, Pub.L. 90–576, Title I, § 101(a)(1), 82 Stat. 1064; Oct. 16, 1964, Pub.L. 88–665, Title XI, § 1102(a), 78 Stat. 1109; renumbered and amended Apr. 11, 1965, Pub.L. 89–10, Title I, §§ 2, 3(a), 4(d)(2), 5, 79 Stat. 27, 34–36; Nov. 1, 1965, Pub.L. 89–313, § 4(a), 79 Stat. 1161; Nov. 3, 1966, Pub.L. 89–750, Title II, § 201, 80 Stat. 1210; Jan. 2, 1968, Pub.L. 90–247, Title II, §§ 204(d), 205(a), 206, Title III, § 301(e), 81 Stat. 808, 809, 813; Apr. 13, 1970, Pub.L. 91–230, Title II, §§ 201(b), 202, 84 Stat. 154, 155; Aug. 21, 1974, Pub.L. 93–380, Title III, §§ 304(a)(1), (b)(1), 305(a)(1), 88 Stat. 522, 523; Apr. 21, 1976, Pub.L. 94–273, § 3(5), 90 Stat. 376; Nov. 1, 1978, Pub.L. 95–561, Title X, §§ 1001(b), 1002, 1003(a), (b), (d), 1004, 1031(a), Title XI, § 1101(a), 92 Stat. 2306, 2307, 2312, 2313; Aug. 13, 1981, Pub.L. 97–35, Title V, § 505(a)(2), 95 Stat. 442; Sept. 24, 1983, Pub.L. 98–94, Title XII, § 1255(b), 97 Stat. 701; Oct. 19, 1984, Pub.L. 98–511, Title III, §§ 301(a)(1)–(3), 303(a), 98 Stat. 2388, 2389; Nov. 8, 1984, Pub.L. 98–619, Title III, § 300, 98 Stat. 3323; July 2, 1986, Pub.L. 99–349, Title I, 100 Stat. 739, 740; Apr. 28, 1988, Pub.L. 100–297, Title II, §§ 2011(a)(1), 2012(a), 2014, 2019, 102 Stat. 294, 295, 300; May 11, 1989, Pub.L. 101–26, § 2(b), 103 Stat. 54.)

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HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1950 Act. Senate Report No. 2458 and Conference Report No. 3109, see 1950 U.S.Code Cong. Service, p. 4014.

1953 Act. Senate Report No. 714, see 1953 U.S.Code Cong. and Adm. News, p. 2325.

1955 Act. House Report No. 1441, see 1955 U.S.Code Cong. and Adm. News, p. 3086.

1956 Acts. Senate Report No. 2662, see 1956 U.S.Code Cong. and Adm. News, p. 4062.

Senate Report No. 2753, see 1956 U.S. Code Cong. and Adm. News, p. 4265.

1958 Act. Senate Report No. 1929, see 1958 U.S.Code Cong. and Adm. News, p. 3412.

1959 Act. Senate Report No. 331, see 1959 U.S. Code Cong. and Adm. News, p. 1675.

1960 Act. Senate Report No. 1681, see 1960 U.S. Code Cong. and Adm. News, p. 2963.

1961 Act. Senate Report No. 743, see 1961 U.S.Code Cong. and Adm.News, p. 3087.

1963 Act. House Report No. 393 and Conference Report No. 1025, see 1963 U.S.Code Cong. and Adm.News, p. 1293.

1964 Act. House Report No. 1639 and Conference Report No. 1916, see 1964 U.S.Code Cong. and Adm.News, p. 4023.

1965 Acts. Senate Report No. 146, see 1965 U.S.Code Cong. and Adm.News, p. 1446.

Senate Report No. 783, see 1965 U.S. Code Cong. and Adm.News, p. 3939.

1966 Act. House Report No. 1814, see 1966 U.S.Code Cong. and Adm.News, p. 3844.

section in credit or deduction from general state support to which districts would otherwise be entitled violated U.S.C.A.Const. Art. 6, cl. 2. Triplett v. Tiemann, D.C.Neb.1969, 302 F.Supp. 1244.

A deduction from the state aid fund to federally impacted areas is prohibited by this subchapter, and, under U.S.C.A. Const. Art. 6, cl. 2, state law authorizing a twenty five per cent deduction was unconstitutional. Hergenreter v. Hayden, D.C.Kan.1968, 295 F.Supp. 251.

South Dakota statutes specifying formula for deduction of certain percentages of federal impact funds received by eligible districts from amount of state aid to such impacted areas are unconstitutional as being in violation of U.S.C.A. Const. Art. 6, cl. 2, and for effectively denying to children and parents who either live or work on federal lands within state of South Dakota same school privileges as other children in state, although state did not retain money saved by application of statute but disbursed it to all school districts within the state. Douglas Independent School Dist. No. 3 v. Jorgenson, D.C.S.D.1968, 293 F.Supp. 849.

Reduction of state aid to local school district, pursuant to "bail out" legislation to help reduce impact from loss of revenue following passage of Proposition 13, by taking into consideration federal impact aid previously received by local district and held in its ending fund balances violated federal mandate prohibiting states from taking federal impact money into consideration in allocating state school aid funds and required modification of the state grant of school aid, despite fact that the legislation did not specifically require reduction to include federal impact aid as had prior legislative efforts. San Miguel Joint Union School Dist. v. Ross, 1981, 173 Cal.Rptr. 292, 118 C.A.3d 82.

5. Federal children as third-party beneficiaries

Parish school board and superintendent of schools, by their contractual assurances with the United States to provide education for federal children from Air Force base on same terms as provisions for other children in parish have afforded rights to federal children as third party beneficiaries. Lemon v. Bossier Parish School Bd., D.C.La.1965, 240 F.Supp. 709, rehearing denied 240 F.Supp. 743, affirmed 370 F.2d 847, certiorari denied 87 S.Ct. 2116, 388 U.S. 911, 18 L.Ed.2d 1350.

6. Persons entitled to sue for desegregation

Pupils attending schools maintained by federal funds were entitled to sue for desegregation of schools as representatives of class comprised of all children attending schools maintained with federal financial assistance. Lemon v. Bossier Parish School Bd., D.C.La.1965, 240 F.Supp. 709, rehearing denied 240 F.Supp. 743, affirmed 370 F.2d 847, certiorari denied 87 S.Ct. 2116, 388 U.S. 911, 18 L.Ed.2d 1350.

7. Review

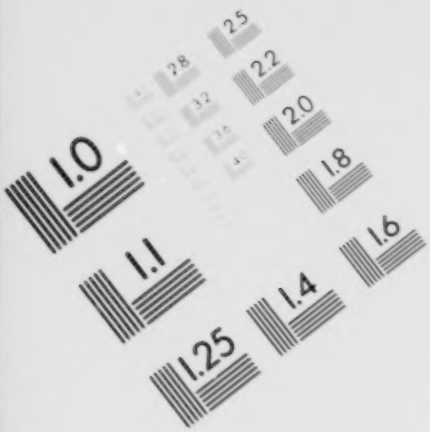
Where there was no showing of illegality, abuse of discretion or error of law, or arbitrariness or capriciousness on part of Commissioner of Education in allocating and distributing federal funds provided for purpose of financially assisting local educational agencies in education of children of low income families, Commissioner's judgment on such matter would not be disturbed. Board of Ed., Union Free School Dist. No. 8, Roosevelt, Town of Hempstead, Nassau County v. Commissioner of Ed., 1969, 306 N.Y.S.2d 382, 61 Misc.2d 741.

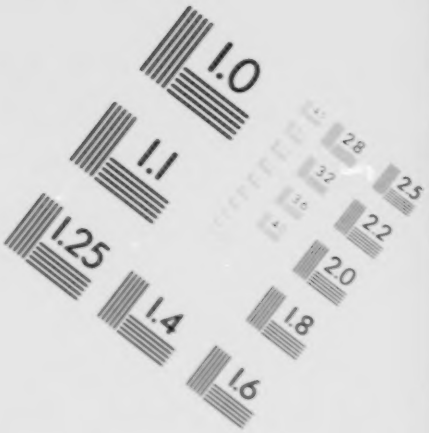
§ 239. Sudden and substantial increases in attendance

(a) Determination by Secretary; amount of contribution

If the Secretary determines for any fiscal year ending prior to October 1, 1993—

(1) that, as a direct result of activities of the United States (carried on either directly or through a contractor), an increase in the number of children in average daily attendance at the





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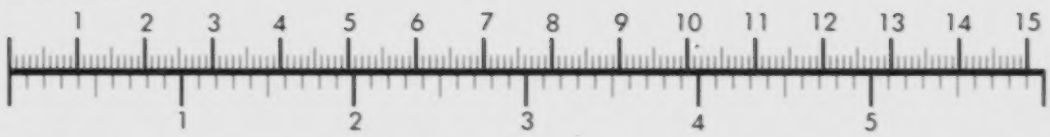

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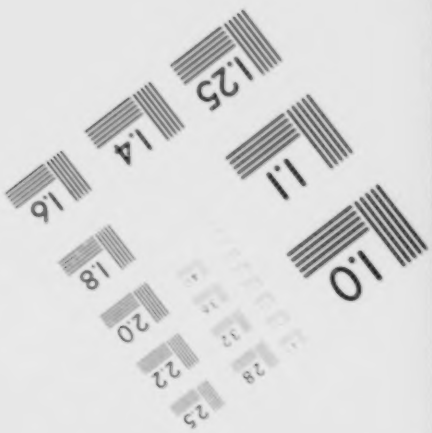

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schools of any local educational agency has occurred in such fiscal year, which increase so resulting from activities of the United States is equal to at least 5 per centum of the difference between the number of children in average daily attendance at the schools of such agency during the preceding fiscal year and the number of such children whose attendance during such year resulted from activities of the United States (including children who resided on Federal property or with a parent employed on Federal property); and

(2) that such activities of the United States have placed on such agency a substantial and continuing financial burden; and

(3) that such agency is making a reasonable tax effort and is exercising due diligence in availing itself of State and other financial assistance but is unable to secure sufficient funds to meet the increased educational costs involved,

then such agency shall be entitled to receive for such fiscal year an amount equal to the product of—

(A) the number of children which the Secretary determines to be the increase, so resulting from activities of the United States, in such year in average daily attendance; and

(B) the amount which the Secretary determines to be the current expenditures per child necessary to provide free public education to such additional children during such year, minus the amount which the Secretary determines to be available from State, local, and Federal sources for such purpose (not counting as available for such purpose either payments under this chapter or funds from local sources necessary to provide free public education to other children).

For the next fiscal year (except where the determination under the preceding sentence has been made with respect to the fiscal year ending June 30, 1973) such agency shall be entitled to receive 50 per centum of such product reduced by the amount of such product which is attributable to children with respect to whom such agency is, or upon application would be, entitled to receive any payment under section 238 of this title for such fiscal year, but not to exceed for such year the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds (exclusive of funds available under subchapter II of this chapter) available to it for such purpose, to provide a level of education equivalent to that maintained in the school districts in such State which in his judgment are generally comparable to the school district of such agency. The determinations whether an increase has occurred for purposes of clause (1) of this subsection and whether such increase meets the 5 per centum requirement

contained in such clause, for any fiscal year, shall be made on the basis of estimates by the Secretary made prior to the close of such year, except that an underestimate made by the Secretary pursuant to the foregoing provisions of this sentence shall not operate to deprive an agency of its entitlement to any payments under this section to which it would be entitled had the estimate been accurate. The determination under clause (B) of this subsection shall by made by the Secretary after considering the current expenditures per child in providing free public education in those school districts in the State which, in the judgment of the Secretary, are generally comparable to the school district of the local educational agency for which the computation is being made.

(b) Omitted

(c) Counting of certain children in determination of increases

In determining under subsection (a) of this section whether there has been an increase in attendance in any fiscal year directly resulting from activities of the United States and the number of children with respect to whom payment is to be made for any fiscal year, the Secretary shall not count—

(A) children with respect to whom a local educational agency is, or upon application would be, entitled to receive any payment under section 238 of this title for such fiscal year: *Provided*, That the Secretary shall count for such purposes as an increase directly resulting from activities of the United States, an increase in the number of children who reside on Federal property or reside with a parent employed on Federal property, if the local educational agency files, in accordance with regulations of the Secretary, its election that such increase be counted for such purposes instead of for the purposes of section 238 of this title; and

(B) children whose attendance is attributable to activities of the United States carried on in connection with real property which has been excluded from the definition of Federal property by the last sentence of paragraph (1) of section 244 of this title.

(d) Adjustment for decreases in Federal activities

Whenever the Secretary determines that–

(1) a local educational agency has made preparations to provide during a fiscal year free public education for a certain number of children to whom subsection (a) of this section applies;

(2) such preparations were in his judgment reasonable in the light of the information available to such agency at the time such preparations were made; and

(3) such number has been substantially reduced by reason of a decrease in or cessation of Federal activities or by reason of a failure of any of such activities to occur,

the amount to which such agency is otherwise entitled under this section for such year shall be increased to the amount to which, in the judgment of the Secretary, such agency would have been entitled but for such decrease in or cessation of Federal activities or the failure of such activities to occur, minus any reduction in current expenditures for such year which the Secretary determines that such agency has effected, or reasonably should have effected, by reason of such decrease in or cessation of Federal activities or the failure of such activities to occur.

(e) Consultation with State and local authorities

All determinations of the Secretary under this section shall be made only after consultation with the State educational agency and the local educational agency.

Sept. 30, 1950, c. 1124, Title I, § 4, formerly § 4, 64 Stat. 1104; Aug. 8, 1953, c. 402, §§ 3–5, 67 Stat. 532–534; Aug. 12, 1955, c. 868, §§ 1, 2, 69 Stat. 713; Aug. 3, 1956, c. 915, Title II, §§ 207, 208, 70 Stat. 972; Aug. 12, 1958, Pub.L. 85–620, Title II, § 203, 72 Stat. 560; Oct. 3, 1961, Pub.L. 87–344, Title I, § 102(a), 75 Stat. 759; Dec. 18, 1963, Pub.L. 88–210, Title III, § 302, formerly § 32, 77 Stat. 419, renumbered Oct. 16, 1968, Pub.L. 90–576, Title I, § 101(a)(1), 82 Stat. 1064; Oct. 16, 1964, Pub.L. 88–665, Title XI, § 1102(a), 78 Stat. 1109; renumbered and amended Apr. 11, 1965, Pub.L. 89–10, Title I, §§ 3(b), 5, 79 Stat. 34, 36; Jan. 2, 1968, Pub.L. 90–247, Title III, § 301(e), 81 Stat. 813; Apr. 13, 1970, Pub.L. 91–230, Title II, § 201(b), 84 Stat. 154; Aug. 21, 1974, Pub.L. 93–380, Title III, § 303(a)(2), 88 Stat. 522; Apr. 21, 1976, Pub.L. 94–273, § 3(5), 90 Stat. 376; Nov. 1, 1978, Pub.L. 95–561, Title X, § 1001(c), 92 Stat. 2306; Oct. 19, 1984, Pub.L. 98–511, Title III, § 301(a)(1), 98 Stat. 2388; Apr. 28, 1988, Pub.L. 100–297, Title II, §§ 2011(a)(1), 2012(a), 102 Stat. 294.)

HISTORICAL AND STATUTORY NOTES

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1950 Act. Senate Report No. 2458 and Conference Report No. 3109, see 1950 U.S.Code Cong. Service, p. 4014.

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1956 Act. Senate Report No. 2753, see 1956 U.S.Code Cong. and Adm.News, p. 4265.

1958 Act. Senate Report No. 1929, see 1958 U.S.Code Cong. and Adm.News, p. 3412.

1961 Act. Senate Report No. 743, see 1961 U.S.Code Cong. and Adm.News, p. 3087.

1963 Act. House Report No. 393 and Conference Report No. 1025, see 1963 U.S.Code Cong. and Adm.News, p. 1293.

1964 Act. House Report No. 1639 and Conference Report No. 1916, see 1964 U.S.Code Cong. and Adm.News, p. 4023.

Fiscal Year Transition Period of July 1, 1976, through September 30, 1976, Deemed Part of Fiscal Year Beginning October 1, 1976

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning Oct. 1, 1976, for purposes of this section, see section 205(26) of Pub.L. 94–274, set out as a note under section 5532 of Title 5, Government Organization and Employees.

LIBRARY REFERENCES

American Digest System

Administration, apportionment and disposition of school funds in general, see Schools ⇐18, 19(1).

Disbursements in general, see United States ⇐82(1 to 7).

Encyclopedias

Administration, apportionment and disposition of school funds in general, see C.J.S. Schools and School Districts §§ 19, 21.

Disbursements in general, see C.J.S. United States § 122.

WESTLAW ELECTRONIC RESEARCH

Schools cases: 345k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 239a. Repealed. Pub. L. 97–35, Title V, § 542(1), Aug. 13, 1981, 95 Stat. 458.

HISTORICAL AND STATUTORY NOTES

Section, Act Sept. 30, 1950, c. 1124, Title I, § 4A, as added Oct. 3, 1980, Pub.L. 96–37, Title XIII, § 1341, 95 Stat. 1500, related to payments for special programs for alien children who fled from Cambodia, Vietnam, Laos, Cuba, or Haiti. See provisions set out as notes under section 1522 of Title 8, Aliens and Nationality.

Effective Date of Repeal

Repeal effective Oct. 1, 1981, see section 547 of Pub.L. 97–35, set out as a note under section 1522 of Title 8, Aliens and Nationality.

§ 240. Payments

(a) Applications to Secretary; time of submission; form; information

Any local educational agency desiring to receive the payments to which it is entitled for any fiscal year under sections 237, 238, or 239 of this title shall submit an application therefor through the State educational agency of the State in which such agency is located to the Secretary. Such applications shall be submitted at such time, in such form, and containing such information as the Secretary may reasonably require to enable him to carry out his functions under this subchapter and shall give adequate assurance that the applicant will submit such reports as the Secretary may reasonably require to determine whether such agency is entitled to a payment under any of such sections and the amount of such payment.

(b) Payments by Secretary; early payments on the basis of estimates; Indian education

(1)(1) The Secretary shall pay to each local educational agency, rounded to the nearest whole dollar,, making application pursuant to subsection (a) of this section, the amount to which it is entitled under sections 237, 238, or 239 of this title. Sums appropriated, for any fiscal year, to enable the Secretary to make payments pursuant to this subchapter shall, notwithstanding any other provision of law unless enacted in express limitation of this subsection, remain available for obligation and payments with respect to amounts due local educational agencies under this subchapter for such fiscal year, until the end of the fiscal year succeeding the fiscal year for which such sums are appropriated. The Secretary shall return to the United States Treasury any funds appropriated for payments under this subchapter for fiscal years 1988 and thereafter that, as the result of overpayments or unallowable expenditures, are recovered by the Department of Education after the end of the fifth fiscal year following the end of the fiscal year for which the sums were appropriated, or that remain in Department of Education accounts after that time.

(2) As soon as possible after the beginning of any fiscal year, the Secretary shall, on the basis of a written request for a preliminary payment from any local educational agency that was eligible for a payment for the preceding fiscal year on the basis of entitlements established under section 237 or 238 of this title, make such a preliminary payment—

(A) to any agency for whom the number of children determined under section 238(a) of this title amounts to at least 20 per centum of such agency's total average daily attendance, of 75 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements; and

(B) to any other agency, of 50 per centum of the amount that such agency received for such preceding fiscal year on the basis of such entitlements.

(3)(A) Payments of entitlements under section 238(d)(2)(D) of this title shall be made only to local educational agencies which have, within one year of November 1, 1978, or when local educational agencies are formed after November 1, 1978, within one year of their formation, established such policies and procedures with respect to information received from Indian parents and tribes as required by this paragraph and which have made assurances to the Secretary, at such time and in such manner as shall be determined by regulation, that such policies and procedures have been

established. The Secretary shall have the authority to waive this one-year limit for good cause, and in writing to the tribes to be affected.

(B) Each local educational agency shall establish such policies and procedures as are necessary to insure that—

(I) Indian children claimed under section 238(a) of this title participate on an equal basis in the school program with all other children educated by the local educational agency;

(II) applications, evaluations, and program plans are adequately disseminated to the tribes and parents of Indian children claimed under section 238(a) of this title; and

(III) tribes and parents of Indian children claimed under section 238(a) of this title are—

(I) afforded an opportunity to present their views with respect to the application, including the opportunity to make recommendations concerning the needs of their children and the ways by which they can assist their children in realizing the benefits to be derived from the educational programs assisted under this paragraph;

(II) actively consulted and involved in the planning and development of programs assisted under this paragraph; and

(III) afforded a general opportunity to present their overall views on the educational program, including the operation of such programs, and the degree of parental participation allowed.

(C)(I) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of subparagraph (B) of this paragraph.

(II) Within ten working days from receipt of the complaint, the Secretary shall—

(I) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or, if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

(II) designate a hearing examiner to conduct the hearing; and

(III) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the

hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

(iii) The hearing shall be held within thirty days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

(iv) The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceeding.

(v) Within thirty days of the completion of the hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial actions (if any) which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

(vi) Within thirty days of his receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for his decision.

(vii) Upon completion of his final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

(viii) In all actions under this subparagraph, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

(D) If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is entitled under section 238(d)(2)(D) of this title until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency: *Provided*, That the Secretary may not withhold such moneys during the course of the school year if he determines that it would substantially disrupt the educational programs of the local educational agency.

(E) If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978, to have education services provided either directly by the Bureau of Indian Affairs or by contract with that Agency, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action (under such subsection (d)) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 238(d)(2)(D) of this title. In such event, funds under such section shall not be withheld pursuant to subparagraph (D) and no further complaints with respect to such students may be filed under subparagraph (C)(i).

(F) This paragraph is based upon the special relationship between the Indian nations and the United States and nothing in it shall be deemed to relieve any State of any duty with respect to any citizens of that State.

(c) Adjustments where necessitated by appropriations

If the sums appropriated for any fiscal year for making payments on the basis of entitlements established under sections 237, 238, and 239 of this title for that year are not sufficient to pay in full the total amounts which the Secretary estimates all local educational agencies are entitled to receive under such sections for such year, the Secretary shall allocate such sums among local educational agencies and make payments to such agencies as follows:

(1)(A) The Secretary shall first allocate to each local educational agency which is entitled to a payment under section 237 of this title an amount equal to 100 per centum of the amount to which it is entitled as computed under that section for such fiscal year and to each local educational agency an amount equal to the supplemental 50 per centum of the entitlement that each child described in section 238(d)(2)(C) of this title served by such agency is eligible to receive under section 238(d)(2)(C) of this title.

(B) The Secretary shall then allocate to any local educational agency which is eligible under section 238(d)(2)(B) of this title an amount equal to 100 per centum of the amount to which such agency is entitled under sections 238(a) and 238(b) of this title.

(C) The Secretary shall reserve from the remainder of the sums appropriated for this chapter (other than amounts needed for section 241-1 of this title) for such fiscal year—

(I) 80 per centum for the purpose of allocating sums under paragraph (2) for entitlements determined under section 238(a) of this title; and

(II) 20 per centum for the purpose of allocating sums under paragraph (3) for entitlements determined under section 238(b) of this title.

(2)(A) For the purpose of allocating sums available for section 238(a) of this title for any fiscal year which remain after the allocation required by paragraph (1) and any allocation required by subsection (e) of this section and section 238(h) of this title for such fiscal year, the Secretary shall determine the category to which a local educational agency belongs as follows:

(I) Each local educational agency in which the number of children determined under section 238(a) of this title amounts to at least 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (i).

(II) Each local educational agency in which the number of children determined under section 238(a) of this title amounts to at least 15 per centum, but less than 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (ii).

(III) Each local educational agency in which the number of children determined under section 238(a) of this title amounts to less than 15 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (iii).

(B) The Secretary shall allocate the amounts described in subparagraph (A) according to the following schedule:

(I) A first allocation shall be made as follows:

(I) 80 per centum of entitlement to local educational agencies described in category (i);

(II) 60 per centum of entitlement to local educational agencies described in category (ii); and

(III) 40 per centum of entitlement to local educational agencies described in category (iii).

(II) Any sums remaining after the allocation pursuant to clause (i) shall be allocated as follows:

(I) 20 per centum of entitlement to local educational agencies described in category (i);

(II) 15 per centum of entitlement to local educational agencies described in category (ii); and

(III) 10 per centum of entitlement to local educational agencies described in category (iii).

(III) Any sums remaining after the allocation pursuant to clause (ii) shall be allocated as follows:

(I) 25 per centum of entitlement to local educational agencies described in category (ii); and

(II) 50 per centum of entitlement to local educational agencies described in category (iii).

(3)(A) For the purpose of allocating sums available for section 238(b) of this title for any fiscal year which remain after the allocation required by paragraph (1) and any allocation required by subsection (e) of this section and section 238(h) of this title for such fiscal year, the Secretary shall determine the category to which a local educational agency belongs as follows:

(I) Each local educational agency in which the number of children determined under section 238(b) of this title amounts to at least 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (i).

(II) Each local educational agency in which the number of children determined under section 238(b) of this title amounts to less than 20 per centum of the total number of children who were in average daily attendance in the schools of such agency is in category (ii).

(B) The Secretary shall allocate the amounts described in subparagraph (A) according to the following schedule:

(I) A first allocation shall be made as follows:

(I) 20 per centum of entitlement to local educational agencies described in category (i); and

(II) 10 per centum of entitlement to local educational agencies described in category (ii).

(II) Any sums remaining after the allocation pursuant to clause (i) shall be allocated as follows:

(I) 30 per centum of entitlement to local educational agencies described in category (i); and

(II) 5 per centum of entitlement to local educational agencies described in category (ii).

(III) Any sums remaining after the allocation pursuant to clause (ii) shall be allocated as follows:

(I) 50 per centum of entitlement to local educational agencies described in category (i); and

(II) 85 per centum of entitlement to local educational agencies described in category (ii).

(4) Whenever the additional amounts described in paragraphs (2)(A) and (3)(A) in each fiscal year are insufficient to provide the required percent of entitlement to each local educational agency under paragraph (2)(B) or paragraph (3)(B), respectively, the full amounts that local educational agencies are entitled to receive under such paragraphs shall be ratably reduced. If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

No allocation may be made pursuant to paragraph (2) and no payment may be paid on the basis of any such allocation unless allocations are made pursuant to paragraph (1) and payments are made on the basis of such allocations.

(d) Treatment of payments by States to determine eligibility for, and amount of, State aid; notice and opportunity for hearing; "State aid" and "equalize expenditures" defined; State equalization

(1) Except as provided in paragraph (2), no payments may be made under this subchapter for any fiscal year to any local educational agency in any State (A) if that State has taken into consideration payments under this subchapter in determining—

(I) the eligibility of any local educational agency in that State for State aid for free public education of children; or

(II) the amount of such aid with respect to any such agency;

during that fiscal year or the preceding fiscal year, or (B) if such State makes such aid available to local educational agencies in such a manner as to result in less State aid to any local educational agency which is eligible for payments under this subchapter than such agency would receive if such agency were not so eligible.

(2)(A) Notwithstanding paragraph (1) of this subsection, if a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this subchapter for any fiscal year may be taken into consideration by such State in determining the relative—

(I) financial resources available to local educational agencies in that State; and

(II) financial need of such agencies for the provision of free public education for children served by such agency, provided

that a State may consider as local resources funds received under this subchapter only in proportion to the share that local revenues covered under a State equalization program are of total local revenues.

The increase in payments described in sections 238(d)(2)(B), 238(d)(2)(C), 238(d)(2)(D), and 238(d)(3)(B)(ii) of this title shall not be taken into consideration by the State for the purpose of this subparagraph. Whenever a State educational agency or local educational agency will be adversely affected by the operation of this subsection, such agency shall be afforded notice and an opportunity for a hearing prior to the reduction or termination of payments pursuant to this subsection.

(B) The terms "State aid" and "equalize expenditures" as used in this subsection shall be defined by the Secretary by regulation, after consultation with State and local educational agencies affected by this subsection, provided that the term "equalize expenditures" shall not be construed in any manner adverse to a program of State aid for free public education which provides for taking into consideration the additional cost of providing free public education for particular groups or categories of pupils in meeting the special educational needs of such children as handicapped children, economically disadvantaged, those who need bilingual education, and gifted and talented children.

(C) In the application of subparagraph (A) of this paragraph to any State having a program described in such subparagraph (A) in effect on October 12, 1976, no payment may be withheld from and no repayment may be required of any State or local educational agency for any period prior to promulgation of final regulations, or, if the State is not in conformance with such regulations, until July 1, 1977.

(C)[2](I) If a State desires to take payments under this section into consideration as provided in this paragraph for any fiscal year, that State shall, not later than sixty days prior to the beginning of such fiscal year, submit notice to the Secretary of its intention to do so. Such notice shall be in such form and be accompanied by such information as to enable the Secretary to determine the extent to which the program of State aid of that State is consistent with the provisions of subparagraph (A). In addition, such notice shall be accompanied by such evidence as the Secretary finds necessary that each local educational agency in that State has been given notice of the intention of the State. If the Secretary determines that the program of State aid of a State submitting notice under this subparagraph is consistent with the provisions of subparagraph (A), the Secretary shall certify such determination to that State.

(II) Prior to certifying any determination under division (i) for any State for any fiscal year, the Secretary shall give the local educational agencies in that State an opportunity for a hearing at which such agencies may present their views with respect to the consistency of the State aid program of that State with the provisions of subparagraph (A).

(III) The Secretary shall not finally deny to any State for any fiscal year certification of a determination under division (i) without first giving that State an opportunity for a hearing.

(e) Discretionary allocations

(1)(A) For any fiscal year after September 30, 1988, the Secretary shall allocate, to any local educational agency eligible for a payment under section 238(a) of this title, not less than the product of—

(I) the number of children in average daily attendance for the fiscal year for which the determination is made under section 238(a) of this title; and

(II)(I) if such agency received a payment under section 238(a) of this title in fiscal year 1987, the per pupil amount paid to that agency in fiscal year 1987; or

(II) if such agency did not receive such a payment in fiscal year 1987, the per pupil amount such agency would have been paid in fiscal year 1987 if such agency had been eligible for payments under section 238(a) of this title and the average daily attendance for such agency for fiscal year 1987 had been equal to the average daily attendance for such agency for the first fiscal year succeeding fiscal year 1988 for which a determination is made under section 238(a) of this title.

(B) For any fiscal year beginning after September 30, 1988, the Secretary shall allocate to any local educational agency which received a payment under section 238(b) of this title in fiscal year 1987 for children described in subsection (c)(3)(A)(i) of this section, an amount which is not less than the product of 100 per centum of the per pupil amount paid to such agency in fiscal year 1987 and the number of such children in average daily attendance in the fiscal year for which such determination is made.

(C) The provisions of subparagraphs (A) and (B) of this paragraph shall not apply to any local educational agency for which the factor in the determination of the local contribution rate described in section 238(d)(3)(A)(i) of this title in the year for which the determination is made is less than the amount for such factor for fiscal year 1987.

(D) The Secretary is authorized to modify the per pupil amount described in subparagraph (A) of this paragraph, in any case in which, in the fiscal year for which the determination is made a local educational agency is no longer an agency described in subsection (c)(2)(A)(i) of this section or subsection (c)(2)(A)(ii) of this section, but is an agency described in subsection (c)(2)(A)(ii) of this section or subsection (c)(2)(A)(iii) of this section, as the case may be.

(E) The provisions of subparagraph (B) of this paragraph shall not apply to any local educational agency which, in the fiscal year for which the determination is made, is not a local educational agency described in subsection (c)(3)(A)(i) of this section.

(2) If sums appropriated for any fiscal year for making payments under this section are not sufficient to pay in full the amount to which each local educational agency is entitled under the previous paragraph, such amounts shall be ratably reduced.

(3) In no event shall the amount allocated to any local educational agency in any fiscal year under subparagraph B of paragraph (1) exceed the amount received by such agency in the fiscal year 1987.

(f) Use of funds with respect to entitlements increased under section 238(d)(2)(C) of this title

The amount of the payment to any local educational agency for any fiscal year which is attributable to a determination of children for increased payments under subparagraph (C) of section 238(d)(2) of this title shall be used by such agency for special educational programs designed to meet the special educational needs of children with respect to whom such determination is made.

(g) Hearing and review

Each local educational agency which is adversely affected or aggrieved by any action of the Secretary under this subchapter shall be entitled to a hearing on, and review of, such action in the same manner as if such agency were a person under the provisions of chapters 5 and 7 of Title 5.

(h) Treatment of administrative school district within State as local educational agency for purpose of determining amount of payment; restrictions

If any legislation enacted after March 31, 1983, affects the determination of amounts of payments made on the basis of entitlements established under sections 237, 238, and 239 of this title by placing any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 238 of this title in the schools of a local educational agency, such restric-

tion shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments). Treating such an administrative school district as a local educational agency under the preceding sentence shall not result, during fiscal year 1984, 1985, or 1986, in an increase of more than 10 per centum in the amount of funds paid to such State above the amount which would otherwise be paid to such State for such fiscal year.

(Sept. 30, 1950, c. 1124, Title I, § 5, formerly § 5, 64 Stat. 1106; Aug. 8, 1953, c. 402, §§ 6, 7, 67 Stat. 534; Aug. 3, 1956, c. 915, Title II, § 209, 70 Stat. 972; renumbered and amended Apr. 11, 1965, Pub.L. 89-10, Title I, § 2, 79 Stat. 27; Nov. 3, 1966, Pub.L. 89-750, Title II, §§ 202, 203, 80 Stat. 1211, 1212; Oct. 16, 1968, Pub.L. 90-576, Title III, § 305(a), 82 Stat. 1097; Apr. 13, 1970, Pub.L. 91-230, Title II, § 203(c)(4), 84 Stat. 156; June 23, 1972, Pub.L. 92-318, Title IV, § 411(c)(1), 86 Stat. 338; Aug. 21, 1974, Pub.L. 93-380, Title III, §§ 304(c)(1), (2), (d)(2), 305(a)(2), 88 Stat. 522, 523, 529; Apr. 21, 1976, Pub.L. 94-273, § 3(5), 90 Stat. 376; Oct. 12, 1976, Pub.L. 94-482, Title III, § 330(a), (b)(1)-(3), 90 Stat. 2221; Nov. 1, 1978, Pub.L. 95-561, Title X, §§ 1003(c), 1005, 1006(a), 1007, 1008, Title XI, § 1101(b), (c), (e), 92 Stat. 2306-2309, 2313, 2315; Aug. 6, 1979, Pub.L. 96-46, § 3(b), 93 Stat. 342; Oct. 17, 1979, Pub.L. 96-88, Title III, § 301(a)(1), Title V, § 507, 93 Stat. 677, 692; Oct. 31, 1983, Pub.L. 98-139, Title III, § 300, 97 Stat. 889; Dec. 8, 1983, Pub.L. 98-211, § 23, 97 Stat. 1419; Aug. 22, 1984, Pub.L. 98-396, Title I, § 101, 98 Stat. 1393; Oct. 19, 1984, Pub.L. 98-511, Title III, § 303(b)(1), 98 Stat. 2389; Apr. 28, 1988, Pub.L. 100-297, Title II, §§ 2011(a)(1), (2), 2015, 102 Stat. 294, 296; May 11, 1989, Pub.L. 101-26, § 2(c)-(e), 103 Stat. 54, 55.)

[1] So in original.

[2] So in original. Probably should be "(D)".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1950 Act. Senate Report No. 2458 and Conference Report No. 3109, see 1950 U.S.Code Cong. Service, p. 4014.

1953 Act. Senate Report No. 714, see 1953 U.S.Code Cong. and Adm.News, p. 2325.

1956 Act. Senate Report No. 2753, see 1956 U.S.Code Cong. and Adm.News, p. 4265.

1965 Act. Senate Report No. 146, see 1965 U.S.Code Cong. and Adm.News, p. 1446.

1966 Act. House Report No. 1814, see 1966 U.S.Code Cong. and Adm.News, p. 3844.

1968 Act. House Report No. 1647 and Conference Report No. 1938, see 1968 U.S.Code Cong. and Adm.News, p. 4164.

1970 Act. Senate Report No. 91-634 and Conference Report No. 91-937, see 1970 U.S.Code Cong. and Adm.News, p. 2768.

1972 Act. House Report No. 92-554, Senate Report No. 92-604, and Senate Conference Report No. 92-798, see 1972 U.S.Code Cong. and Adm.News, p. 2462.

1974 Act. House Report No. 93-805 and Senate Conference Report No. 93-1026, see 1974 U.S.Code Cong. and Adm.News, p. 4093.

1976 Acts. House Report No. 94-1000, see 1976 U.S.Code Cong. and Adm.News, p. 690.

Senate Report No. 94-882 and House Conference Report No. 94-1701, see 1976 U.S.Code Cong. and Adm.News, p. 4713.

WESTLAW ELECTRONIC RESEARCH

Schools cases: 345k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

Effective date 1
Equalization 2
Substitution of Federal for state funds 3

1. Effective date

Pub.L. 90-576, Title III, § 305(b), Oct. 16, 1968, 82 Stat. 1097, set out as a note under this section, which prescribed the effective dates of prohibition of subsec. (d)(2) of this section against making of any payment to local educational agency in any state which has taken into consideration payments under this subchapter in determining eligibility of local agency for state aid is intended to give state legislatures chance to change laws so as to eliminate their unlawful features and merely postpones effective date of penalty and does not wipe out state's liability to districts and state laws providing for deduction of part of federal impact funds from state aid were invalid under U.S.C.A.Const. Art. 6, cl. 2. Carlsbad Union School Dist. of San Diego County v. Rafferty, C.A.Cal.1970, 429 F.2d 337.

2. Equalization

State may factor revenue received by school districts which serve children who reside on Indian lands into its school finance equalization system only if that system meets the federal definition of an equalized program, subject to the determination of the Secretary of Education. Helena Elementary School Dist. No. 1 v. State, Mont.1989, 796 P.2d 684.

3. Substitution of Federal for state funds

Rhode Island, which had chosen to aid local districts by reimbursing them according to effort of each community, two years previously, and had chosen to define local effort as total expenditure less federal aid granted in same school year as expenditure figure, could not be prohibited from basing state aid to local districts on basis of expenditures two years old or on basis of figures even older if it so chose where deduction did not have effect of substituting federal for state funds. Middletown School Committee v. Board of Regents For Ed. of State of R.I., D.C.R.I.1977, 439 F.Supp. 1122.

§ 241. Education of children where local agencies cannot supply facilities

(a) Necessary arrangements by Secretary; standard of education

In the case of children who reside on Federal property—

(1) if no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

(2) if it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children,

the Secretary shall make such arrangements (other than arrangements with respect to the acquisition of land, the erection of facilities, interest, or debt service) as may be necessary to provide free public education for such children. Such arrangements to

provide free public education may also be made for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Secretary, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children. To the maximum extent practicable, the local educational agency, or the head of the Federal department or agency, with which any arrangement is made under this section shall take such action as may be necessary to ensure that the education provided pursuant to such arrangement is comparable to free public education provided for children in comparable communities in the State, or, in the case of education provided under this section outside the continental United States, Alaska, and Hawaii, comparable to free public education provided for children in the District of Columbia. For the purpose of providing such comparable education, personnel may be employed and the compensation, tenure, leave, hours of work, and other incidents of the employment relationship may be fixed without regard to the Civil Service Act and rules and the following: (1) chapter 51 and subchapter III of chapter 53 of Title 5; (2) subchapter I of chapter 63 of Title 5; (3) sections 5504, 5541 to 5549, and 6101 of Title 5; (4) sections 1302(b), (c), 2108, 3305(b), 3306(a)(2), 3308 to 3318, 3319(b), 3320, 3351, 3363, 3364, 3501 to 3504, 7511, 7512, and 7701 of Title 5; and (5) chapter 43 of Title 5. Personnel provided for under this subsection outside of the continental United States, Alaska, and Hawaii, shall receive such compensation, tenure, leave, hours of work, and other incidents of employment on the same basis as provided for similar positions in the public schools of the District of Columbia. In any case where education was being provided on January 1, 1955, or thereafter under an arrangement made under this subsection for children residing on an Army, Navy (including the Marine Corps), or Air Force installation, it shall be presumed, for the purposes of this subsection, that no local educational agency is able to provide suitable free public education for the children residing on such installation, until the Secretary and the Secretary of the military department concerned jointly determine, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.

(b) Education of children in adjacent areas

In any case in which the Secretary makes such arrangements for the provision of free public education in facilities situated on Federal property, he may also make arrangements for providing free public education in such facilities for children residing in any

area adjacent to such property with a parent who, during some portion of the fiscal year in which such education is provided, was employed on such property, but only if the Secretary determines after consultation with the appropriate State educational agency (1) that the provision of such education is appropriate to carry out the purposes of this subchapter, (2) that no local educational agency is able to provide suitable free public education for such children, and (3) in any case where in the judgment of the Secretary the need for the provision of such education will not be temporary in duration, that the local educational agency of the school district in which such children reside, or the State educational agency, or both, will make reasonable tuition payments to the Secretary for the education of such children. Such payments may be made either directly or through deductions from amounts to which the local educational agency is entitled under this subchapter, or both, as may be agreed upon between such agency and the Secretary. Any amounts paid to the Secretary by a State or local educational agency pursuant to this section shall be covered into the Treasury as miscellaneous receipts.

(c) Education of children whose parents are employed in certain Territories and Possessions

In any case in which the Secretary makes arrangements under this section for the provision of free public education in facilities situated on Federal property in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands, he may also make arrangements for providing free public education in such facilities for children residing with a parent employed by the United States in a grade, position, or classification subject by policy and practice to transfer or reassignment to areas where English is the language of instruction in the schools normally attended by children of Federal employees. Dependents of excepted service professional employees of the schools shall be eligible to attend the schools. In any case where education is being provided under an arrangement made under this subsection, it shall be presumed that no local educational agency is able to provide suitable free public education for the children of eligible parents employed by the United States until the Secretary determines, after consultation with the appropriate State educational agency, that a local educational agency is able to do so.

(d) Restrictions on making arrangements

The Secretary may make an arrangement under this section only with a local educational agency or with the head of a Federal department or agency administering Federal property on which children reside who are to be provided education pursuant to such

arrangement or, in the case of children to whom the second sentence of subsection (a) of this section applies, with the head of any Federal department or agency having jurisdiction over the parents of some or all of such children. Except where the Secretary makes arrangements pursuant to the second sentence of subsection (a) of this section, arrangements may be made under this section only for the provision of education in facilities of a local educational agency or in facilities situated on Federal property. The Secretary shall ensure that funds provided under such arrangement or arrangements are expended in an efficient manner, and shall require an accounting of funds by such agency at least on an annual basis. The Secretary shall further be provided with data relating to the quality and type of education provided to such children under such arrangement or arrangements.

(e) Limit on payments

To the maximum extent practicable, the Secretary shall limit the total payments made pursuant to any such arrangement for educating children within the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the per pupil cost of free public education provided for children in comparable communities in the State. The Secretary shall limit the total payments made pursuant to any such arrangement for educating children outside the continental United States, Alaska, or Hawaii, to an amount per pupil which will not exceed the amount he determines to be necessary to provide education comparable to the free public education provided for children in the District of Columbia.

(f) Children living on Federal property

If no tax revenues of a State or of any political subdivision of the State may be expended for the free public education of children who reside on any Federal property within the State, or if no tax revenues of a State are allocated for the free public education of such children, then the property on which such children reside shall not be considered Federal property for the purposes of sections 238 and 239 of this title. If a local educational agency refuses for any other reason to provide in any fiscal year free public education for children who reside on Federal property which is within the school district of that agency or which, in the determination of the Secretary, would be within that school district if it were not Federal property, there shall be deducted from any amount to which the local educational agency is otherwise entitled for that year under section 238 or 239 of this title an amount equal to (1) the amount (if any) by which the cost to the Secretary of providing free public education for that year for each such child exceeds the local

contribution rate of that agency for that year, multiplied by (2) the number of such children.

(g) Elective school boards

The Secretary shall ensure the establishment of an elective school board in schools assisted under this section. Such school board shall be composed of a minimum of three members, elected by the parents of students in attendance at such school. The Secretary shall, by regulation, establish procedures for carrying out such school board elections as provided in this subsection.

(h) School board oversight of school expenditures and operations

A school board established pursuant to subsection (g) of this section shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary, and other provisions of this section.

(i) Availability of funds

Notwithstanding any other provision of law, a local educational agency receiving funds under section 238 of this title may also receive funds under this section.

(Sept. 30, 1950, c. 1124, Title I, § 6, formerly § 6, 64 Stat. 1107; Aug. 8, 1953, c. 402, § 8, 67 Stat. 535; Aug. 1, 1955, c. 446, 69 Stat. 433; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; May 6, 1960, Pub.L. 86-449, Title V, § 501, 74 Stat. 89; renumbered and amended Apr. 11, 1965, Pub.L. 89-10, Title I, §§ 2, 4(d)(2), 79 Stat. 27, 35; July 21, 1965, Pub.L. 89-77, § 2, 79 Stat. 243; Nov. 3, 1966, Pub.L. 89-750, Title II, § 204, 80 Stat. 1212; Apr. 13, 1970, Pub.L. 91-230, Title IV, § 401(f)(1), 84 Stat. 173; Nov. 1, 1978, Pub.L. 95-561, Title X, §§ 1009, 1031(a), 92 Stat. 2309, 2312; Apr. 28, 1988, Pub.L. 100-297, Title II, §§ 2011(a)(1), 2016, 102 Stat. 294, 299.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1950 Act. Senate Report No. 2458 and Conference Report No. 3109, see 1950 U.S.Code Cong. Service, p. 4014.

1953 Act. Senate Report No. 714, see 1953 U.S.Code Cong. and Adm.News, p. 2325.

1955 Act. Senate Report No. 871, see 1955 U.S.Code Cong. and Adm.News, p. 2591.

1956 Act. Senate Report No. 2662, see 1956 U.S.Code Cong. and Adm.News, p. 4062.

1960 Act. Senate Report No. 1205 and House Report No. 956, see 1960 U.S. Code Cong. and Adm.News, p. 1925.

1965 Acts. Senate Report No. 146, see 1965 U.S.Code Cong. and Adm.News, p. 1446.

Senate Report No. 311, see 1965 U.S. Code Cong. and Adm.News, p. 1910.

1966 Act. House Report No. 1814, see 1966 U.S.Code Cong. and Adm.News, p. 3844.

1970 Act. Senate Report No. 91-634 and Conference Report No. 91-937, see 1970 U.S.Code Cong. and Adm.News, p. 2768.

1978 Act. House Report No. 95-1137 and House Conference Report No. 95-1753, see 1978 U.S.Code Cong. and Adm.News, p. 4971.

1979 Act. Senate Report No. 96-49 and House Conference Report No. 96-459, see 1979 U.S.Code Cong. and Adm.News, p. 1514.

Note 3

same conditions of employment as their District of Columbia counterparts, adequately set forth claim, under subsec. (a) of this section granting rights of equality with District of Columbia counterparts. Antilles Council of School Officers, Local 68, American Federation of School Administrators, AFL–CIO v. Lehman, D.C.Puerto Rico 1982, 550 F.Supp. 1238.

4. —— Collective bargaining

Salary proposal made by union representing nonprofessional employees of army dependent school was not subject to mandatory bargaining; proposal which involved paying employees an amount equal to wages paid to other employees at army post conflicted with statutes requiring that dependent schools provide education at a cost per pupil not exceeding that incurred by comparable local public school systems. U.S.Dept. of Defense Dependent Schools, Fort Bragg, N.C. v. Federal Labor Relations Authority, C.A.4, 1988, 838 F.2d 129.

Subsec. (a) of this section providing that incidents of employment of school personnel under this section, i.e., personnel in schools located in military bases outside continent or United States, Alaska and Hawaii, be "on the same basis" as those granted to school personnel of the District of Columbia was intended primarily to insure that quality of education given by nonstate schools under this section be comparable to education provided by District of Columbia schools, and it was not intended to grant collective bargaining rights to teachers and principals. Antilles Council of School Officers, Local 68, American Federation of School Administrators, AFL–CIO v. Lehman, D.C.Puerto Rico 1982, 550 F.Supp. 1238.

5. —— Wages

Statute requiring the Army to provide education for dependents of service members and civilian employees which is comparable to the education provided through local public schools at a cost per pupil not exceeding the per pupil cost of public education in local community does not specifically provide for wages of teachers and other employees of army school nor require the payment of comparable wages. Fort Stewart Schools v. Federal Labor Relations Authority, C.A.11, 1988, 860 F.2d 396, rehearing denied 869 F.2d 1502.

Under this section, persons "may" be employed to work at federal dependents' schools without regard to certain civil service laws, including those pertaining to the general schedule pay rates, but the provisions of such laws may nevertheless be extended to school employees by operation of administrative directives and contract clauses. 1979, 58 Comp. Gen. 430.

6. Remedies—Generally

Teachers employed by agency responsible for education of children of United States personnel stationed at various military bases in Puerto Rico were not entitled to monetary relief for having to work longer day than similar personnel in public schools of District of Columbia under statute requiring that federally employed personnel receive same compensation, tenure, hours of work and other incidents of employment as their District of Columbia counterparts. Franco v. U.S., 1988, 15 Cl.Ct. 283, affirmed 878 F.2d 1445.

7. —— Injunction

County school district which had allegedly applied for and received grants of federal funds from Commissioner of Education of the United States upon giving assurances that school facilities of district would be available to children for whose education contributions were provided and which had received the money for the specific purpose of providing school housing for Air Force base children would be temporarily enjoined against failing to make the schools available to those children. U.S. v. Sumter County School Dist. No. 2, D.C.S.C.1964, 232 F.Supp. 945.

§ 241–1. Assistance for current school expenditures in cases of certain disasters

(a) Eligibility requirements; terms; duration; maximum amount

In any case in which—

(1) the President determines with respect to any local educational agency (including for the purpose of this section any other public agency which operates schools providing technical, vocational, or other special education to children of elementary or secondary school age) that such agency is located in whole or in part within an area which after August 30, 1965, and prior to October 1, 1993, has suffered a major disaster as the result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to sections 5122(2) and 5170 of Title 42, is or threatens to be of sufficient severity or magnitude to warrant disaster assistance by the Federal Government; and

(2) the Governor of the State in which such agency is located has certified the need for disaster assistance under this section, and has given assurance of expenditure of a reasonable amount of the funds of the government of such State, or of any political subdivision thereof, for the same or similar purposes with respect to such catastrophe;

and if the Secretary determines with respect to such agency that—

(3) such agency is utilizing or will utilize all State and other financial assistance available to it for the purpose of meeting the cost of providing free public education for the children attending the schools of such agency, but as a result of such disaster it is unable to obtain sufficient funds for such purpose and requires an amount of additional assistance equal to at least $10,000 or 5 per centum of such agency's current operating expenditures during the fiscal year preceding the one in which such disaster occurred, whichever is less, and

(4) in the case of any such major disaster to the extent that the operation of private elementary and secondary schools in the school attendance area of such local educational agency has been disrupted or impaired by such disaster, such local educational agency has made provisions for the conduct of educational programs under public auspices and administration in which children enrolled in such private elementary and secondary schools may attend and participate: *Provided,* That nothing contained in this chapter shall be construed to authorize the making of any payment under this chapter for religious worship or instruction,

the Secretary may provide to such agency the additional assistance necessary to provide free public education to the children attending the schools of such agency, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest. Such additional assistance

may be provided for a period not greater than a five-fiscal-year period beginning with the fiscal year in which it is determined pursuant to clause (1) of this subsection that such agency suffered a disaster. The amount so provided for any fiscal year shall not exceed the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds available to it for such purpose, to provide a level of education equivalent to that maintained in the schools of such agency prior to the occurrence of such disaster, taking into account the additional costs reasonably necessary to carry out the provisions of clause (4) of this subsection. The amount, if any, so provided for the second, third, and fourth fiscal years following the fiscal year in which it is so determined that such agency has suffered a disaster shall not exceed 75 per centum, 50 per centum, and 25 per centum, respectively, of the amount so provided for the first fiscal year following such determination.

(b) Additional funds for replacing supplies and equipment, making minor repairs, and leasing temporary facilities

In addition to and apart from the funds provided under subsection (a) of this section, the Secretary is authorized to provide to such agency an amount which he determines to be necessary to replace instructional and maintenance supplies, equipment, and materials (including textbooks) destroyed or seriously damaged as a result of such disaster, to make minor repairs, and to lease or otherwise provide (other than by acquisition of land or erection of facilities) school and cafeteria facilities needed to replace temporarily such facilities which have been made unavailable as a result of the disaster.

(c) Authorization of appropriations; expenditure of sums pending appropriation

There is hereby authorized to be appropriated for each fiscal year such amounts as may be necessary to carry out the provisions of this section. Pending such appropriation, the Secretary is authorized to expend (without regard for sections 1341(a) and 1515(b) of Title 31) from any funds appropriated to the Department of Education and at that time available to the Secretary, such sums as may be necessary for providing immediate assistance under this section. Expenditures pursuant to the preceding sentence shall—

(1) be reported by the Secretary to the Committees on Appropriations and Education and Labor of the House of Representatives and the Committees on Appropriations and Labor and Human Resources of the Senate within thirty days of the expenditure;

(2) be reimbursed from the appropriations authorized by the first sentence of this subsection.

The report required to the Committees on Appropriations by clause (1) in the preceding sentence shall constitute a budget estimate within the meaning of section 1105(a)(5) of Title 31.

(d) Applications; priority of approvals; prompt consideration for applications

No payment may be made to any local educational agency under this section except upon application therefor which is submitted through the appropriate State educational agency and is filed with the Secretary in accordance with the regulations prescribed by him. In determining the order in which such applications shall be approved, the Secretary shall consider the relative educational and financial needs of the local educational agencies which have submitted approvable applications. The Secretary shall complete action of approval or disapproval of an application within 90 days of the filing of an application.

(e) Payments to local agencies; repayment of unexpended funds

Amounts paid by the Secretary to local educational agencies under this section may be paid in advance or by way of reimbursement and in such installments as the Secretary may determine. Any funds paid to a local educational agency and not expended or otherwise used for the purposes for which paid shall be repaid to the Treasury of the United States.

(f) Availability of funds

Funds available for this section for any fiscal year shall also be available for section 646 of this title.

(Sept. 30, 1950, c. 1124, Title I, § 7, as added Nov. 1, 1965, Pub.L. 89–313, § 2, 79 Stat. 1159, and amended Jan. 2, 1968, Pub.L. 90–247, Title II, § 218, 81 Stat. 811; Oct. 21, 1968, Pub.L. 90–608, c. IV, § 402, 82 Stat. 1194; Apr. 13, 1970, Pub.L. 91–230, Title II, § 201(c), 84 Stat. 154; Dec. 31, 1970, Pub.L. 91–606, Title III, § 301(e), 84 Stat. 1759; 1973 Reorg. Plan No. I, §§ 1, 3(a)(1), eff. July 1, 1973, 38 F.R. 9579, 87 Stat. 1089; Dec. 10, 1973, Ex.Ord. No. 11749, § 2(2), 38 F.R. 34177; May 22, 1974, Pub.L. 93–288, Title VI, § 602(e), 88 Stat. 163; Aug. 21, 1974, Pub.L. 93–380, Title III, §§ 303(a)(3), 305(a)(3), 88 Stat. 522, 532, Apr. 21, 1976, Pub.L. 94–273, § 3(5), 90 Stat. 376; Nov. 1, 1978, Pub.L. 95–561, Title X, § 1010(a), 92 Stat. 2310; July 20, 1979, Ex.Ord. No. 12148, § 4–106, 44 F.R. 43239; Aug. 6, 1979, Pub.L. 96–46, § 3(a), 93 Stat. 342; Oct 17, 1979, Pub.L. 96–88, Title III, § 301(b)(2), Title V, § 507, 93 Stat. 679, 692; Oct. 19, 1984, Pub.L. 98–511, Title III, § 301(a)(1), 98 Stat. 2388; Apr. 28, 1988, Pub.L. 100–297, Title II, §§ 2011(a)(1), (b), 2012(a), 2017, 102 Stat. 294, 299; Nov. 23, 1988, Pub.L. 100–707, Title I, § 109(i), 102 Stat. 4709.)

riod beginning July 1, 1953, and ending June 30, 1958" which followed "shall be available", and inserted provisions relating to availability of appropriations under sections 452 to 455 of Title 25.

1956 Amendment. Subsec. (d). Act Aug. 3, 1956 substituted "1958" for "1957".

1955 Amendments. Subsec. (d). Act Aug. 12, 1955 substituted "1957" for "1956".

Act Aug. 4, 1955 excluded appropriations for the making of payments directed to be made by section 2391 of Title 42.

1953 Amendment. Subsec. (a). Act Aug. 8, 1953, § 9(a), authorized the Commissioner to delegate all his functions under this chapter, except the making of regulations.

Subsec. (d). Act Aug. 8, 1953, § 9(b), extended its duration for two years until June 30, 1956, limited restriction on appropriations to use of funds for employment of teaching personnel and excluded funds handled by the Bureau of Indian Affairs.

Effective Dates

1988 Act. Amendment by Pub.L. 100-297 effective July 1, 1988, see section 6303 of Pub.L. 100-297, set out as a note under section 2701 of this title.

1958 Act. Amendment by Pub.L. 85-620 effective for the period beginning July 1, 1958, see note set out under section 237 of this title.

1956 Act. Amendment by Act Aug. 3, 1956 effective July 1, 1956, see note set out under section 237 of this title.

1953 Act. Section 9 of Act Aug. 8, 1953 provided in part that the amendments made by such section 9 [amending subsecs. (a) and (d) of this section] shall become effective July 1, 1953.

Amounts Appropriated for Fiscal Years After Fiscal Year 1988

Provisions of sections 2001 to 2034 of Pub.L. 100-297 to apply only with respect to amounts appropriated for fiscal years beginning after Sept. 30, 1988, see section 6303(b)(6) of Pub.L. 100-297, set out as a note under section 2701 of this title.

CROSS REFERENCES

Bureau of Indian Affairs, see 20 USCA § 1 et seq.

LIBRARY REFERENCES

American Digest System

Administration, apportionment and disposition of school funds in general, see Schools ⇐18, 19(1).

Disbursements in general, see United States ⇐82(1 to 7).

Encyclopedias

Administration, apportionment and disposition of school funds in general, see C.J.S. Schools and School Districts §§ 19, 21.

Disbursements in general, see C.J.S. United States § 122.

WESTLAW ELECTRONIC RESEARCH

Schools cases: 345k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 244. Definitions

For the purposes of this chapter–

(1) The term "Federal property" means real property which is owned by the United States or is leased by the United States, and which is not subject to taxation by any State or any political subdivision of a State or by the District of Columbia. Such term includes (A) except for purposes of section 241 of this title, real property held in trust by the United States for individual Indians or Indian tribes, and real property held by individual Indians or Indian tribes which is subject to restrictions on alienation imposed by the United States, (B) for one year beyond the end of the fiscal year in which occurred the sale or transfer thereof by the United States, any property considered prior to such sale or transfer to be Federal property for the purposes of this chapter, (C) any low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937 [42 U.S.C.A. § 1437 et seq.], section 516 of the Housing Act of 1949 [42 U.S.C.A. § 1486], or part B of title III of the Economic Opportunity Act of 1964 [42 U.S.C.A. § 2861 et seq.], (D) any school which is providing flight training to members of the Air Force under contractual arrangements with the Department of the Air Force at an airport which is owned by a State or a political subdivision of a State and (E) any property owned by a foreign government or by an international organization which by reason of such ownership is not subject to taxation by the State in which it is located or a subdivision thereof. Such term also includes any interest in Federal property (as defined in the foregoing provisions of this paragraph) under an easement, lease, license, permit, or other arrangement, as well as any improvements of any nature (other than pipelines or utility lines) on such property even though such interests or improvements are subject to taxation by a State or political subdivision of a State or by the District of Columbia. Notwithstanding the foregoing provisions of this paragraph, such term does not include any real property under the jurisdiction of the United States Postal Service and used primarily for the provision of postal services. Real property which qualifies as Federal property under clause (A) of this paragraph shall not lose such qualification because it is used for a low-rent housing project.

(2) The term "child" means any child who is within the age limits for which the applicable State provides free public education.

(3) The term "parent" includes a legal guardian or other person standing in loco parentis.

(4) The term "free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State.

(5) The term "current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under chapter 1 or 2 of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C.A. § 2701 et seq., § 2911 et seq.].

(6) For purposes of subchapter I of this chapter, the term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a State. Such term includes any State agency which directly operates and maintains facilities for providing free public elementary and secondary education through grade 12.

(7) The term "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(8) The term "State" means a State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(9) The term "Secretary" means the Secretary of Education.

(10) Average daily attendance shall be determined in accordance with State law, except that (A) the average daily attendance of children with respect to whom payment is to be made under section 238 or 239 of this title shall be determined in accordance with regulations of the Secretary, and (B) notwithstanding any other provision of this chapter, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this chapter the attendance of such child at such school shall be held and considered (i) to be attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (ii) not to be attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract. A child shall, for the purposes of section 238 of this title, be deemed to be in attendance at a school of a local educational agency if such child is determined to be federally connected under clause (1) or (2) of section 238(a) of this title or under clause (1), (2), or (3) of

section 238(b) of this title for any fiscal year and if such child is attending a school other than a school of such agency because such child is handicapped (as defined in section 1401(1) of this title) and if such agency makes a tuition payment on behalf of such child to such school for such fiscal year. Regulations promulgated by the Secretary in accordance with clause (A) of this paragraph shall permit the conversion of average daily membership to average daily attendance for local educational agencies in States which reimburse local educational agencies based upon average daily membership and which do not require local educational agencies to keep records based on average daily attendance.

(11) The term "county" means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

(12) The term "construction" includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

(13) The term "school facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

(14) The term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

(Sept. 30, 1950, c. 1124, Title IV, § 403, formerly § 9, 64 Stat. 1108; Aug. 8, 1953, c. 402, § 10, 67 Stat. 536; Aug. 1, 1956, c. 852, § 10, 70 Stat. 909; Aug. 3, 1956, c. 915, Title II, § 211, 70 Stat. 972; Aug. 12, 1958, Pub.L. 85-620, Title II, § 205, 72 Stat. 560; June 25, 1959, Pub.L. 86-70, § 18(d)(4), 73 Stat. 145; July 12, 1960, Pub.L. 86-624, § 14(d)(4), 74 Stat. 414; Oct. 16, 1964, Pub.L. 88-665, Title XI, § 1102(b), 78 Stat. 1109, renumbered Title III, § 303, and amended Apr. 11, 1965, Pub.L. 89-10, Title I, §§ 3(c)(1), 4(a)-(c), (d)(1), (e), 79 Stat. 35; Nov. 1, 1965, Pub.L. 89-313, § 6(c), 79 Stat. 1162; Nov. 3, 1966, Pub.L. 89-750, Title I, § 117(a)(1), (b), Title II, § 206, 80 Stat. 1198, 1199, 1213; Jan. 2, 1968, Pub.L. 90-247, Title II, § 201, 81 Stat. 806; Apr. 13, 1970, Pub.L. 91-230, Title II, § 203(b), 84 Stat. 156; Aug.

CROSS REFERENCES

Determining increased school attendance where non-Federal property, see 20 USCA § 239.
Local educational agencies on Indian land—
Appropriation adjustments, see 20 USCA § 240.
Payments, see 20 USCA § 238.
Prohibition against use of appropriated funds for busing, see 20 USCA § 1228.

LIBRARY REFERENCES

American Digest System
Administration, apportionment and disposition of school funds in general, see Schools ⇐18, 19(1).
Disbursements in general, see United States ⇐82(1 to 7).
Encyclopedias
Administration, apportionment and disposition of school funds in general, see C.J.S. Schools and School Districts §§ 19, 21.
Disbursements in general, see C.J.S. United States § 122.

WESTLAW ELECTRONIC RESEARCH

Schools cases: 345k[add key number].
United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 244a. School facilities for children of Government employees and other residents in Indian reservations, national parks, and national monuments

In order to facilitate the providing of educational opportunities for children of Government employees and other residents in Indian reservations, the national parks and national monuments the Secretary of the Interior is authorized in his discretion to make available for elementary school purposes therein, without charge, space in Government-owned buildings, when such space may be available for such purposes without detriment to the official business of such Indian reservations, national parks and national monuments.

(July 16, 1940, c. 629, 54 Stat. 761.)

HISTORICAL AND STATUTORY NOTES

Codifications

Section was not enacted as part of Act Sept. 30, 1950, c. 1124, 64 Stat. 1100, which generally comprises this chapter.

Section was formerly classified to section 78a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub.L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

LIBRARY REFERENCES

American Digest System
Administration, apportionment and disposition of school funds in general, see Schools ⇐18, 19(1).
Disbursements in general, see United States ⇐82(1 to 7).

Appendix D

1. Section 3(b) payments are distributed as follows:

Type of district	Percentage step of 3(b) children in district	Percentage of "entitlement" Wave 1	Wave 2	Wave 3
"Super b"	20% or more	20%	30%	50%
"Regular b"	less than 20%	10%	5%	85%

These steps are also applied successively to funds reserved for 3(b) payments. If money is insufficient for full funding of any step, available funds are prorated among districts.[21]

[21]Section 5(b)(2) provides that districts may receive preliminary payments based on a written request to the Secretary of Education. "Super a" districts are eligible to receive 75 percent of 3(a) payments of the previous fiscal year. Others may receive 50 percent of the previous year's payments.

2. Districts receive the supplementary 50 percent of their entitlement for handicapped students of military parents and handicapped students residing on Indian lands.

3. Of the remaining funds (except for funds needed for section 7),[17] 80 percent are reserved for payments under section 3(a) and 20 percent for section 3(b) payments.[18]

4. Section 3(a) payments are then distributed as follows:[19]

Type of district	Percentage of 3(a) children in district	Percentage of "entitlement" Wave 1	Wave 2	Wave 3
"Super a"	20% or more	80%	20%	0%
"Sub-super a"	15% but less than 20%	60%	15%	25%
"Regular a"	less than 15%	40%	10%	50%

Each wave is applied successively. The first wave requires that "super a" districts receive 80 percent of their entitlements from the funds reserved for section 3(a) payments; then "sub-super a's" receive 60 percent of their payments; and finally "regular a's" receive 40 percent of their payments. Next, if funds are sufficient, the percentages for wave 2 are applied, bringing the "super a" districts to 100 percent of entitlement, the "sub-super a" districts to 75 percent of entitlement, and the "regular a" districts to 50 percent of entitlement. If there are sufficient funds, in step 3 all districts would receive 100 percent of their entitlement.[20]

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[17]Section 7 provides financial assistance to local school districts in which natural disaster necessitates repair of school facilities.

[18]For FY 1991 Congress appropriated approximately 81 percent for section 3(a) ($585.4 million) and 19 percent for 3(b) ($136.6 million).

[19]According to the Senate Committee on Labor and Human Resources, which reported the same tier or step system in its bill (S. 373) to reauthorize Impact Aid, "it is the intent of the Committee to provide a thorough method for distribution of funds for times when Impact Aid is funded below entitlement. The payment system is intended to guarantee that all districts share in overall losses and gains in the Impact Aid program, while at the same time setting a clear priority for the districts that are most heavily impacted." (S. Rept. 100-222, p. 52)

[20]If money is insufficient for full funding of any step, available funds are prorated among districts.

Finally, States' programs that "equalize" educational aid to local school districts can influence impact aid payments (section 5(d)). Since the 1970s, some States have attempted to equalize educational treatment for all school children in the State by providing greater amounts of per pupil aid to poorer school districts, and little or no State education aid to relatively wealthy school districts. Impact aid payments, which ED disburses directly to local school districts, can potentially disrupt these efforts to equalize State educational aid. To alleviate this problem, a State may consider impact aid payments as local revenue and thus reduce State education aid to federally impacted school districts by a specified percentage if the State's equalization program meets published standards (see 34 CFR 222, subpart G) of the Impact Aid program under P.L. 81-874.[13] However, before a State may take this action, ED must approve each specific equalization program, and the State's legislature must enact legislation that allows the State education agency to consider impact aid payments in calculating State education aid payments to federally impacted school districts.[14]

How Are Payments Determined When Appropriations Are Insufficient?

If appropriations are insufficient to fully fund impact aid payments, section 5(c) of the Act specifies a payment distribution system for section 2 and section 3 payments based on districts' percentages and types of federally connected students. The following outlines the priority in which section 2 and section 3 funds are distributed:

1. Districts entitled to section 2[15] and 3(d)(2)(B)[16] payments receive 100 percent of their entitlements under those sections.

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[13]The Hawkins-Stafford Act (P.L. 100-297) amends section 5(d)(2) to exempt payments for the following section 3 categories from State equalization calculations: heavily impacted districts (3(d)(2)(B)), handicapped students (3(d)(2)(C)), children residing on Indian lands (3(d)(2)(D)), and unusual geographic factors (3(d)(3)(B)(ii)).

[14]Currently the following States have authorized plans: Alaska, Arizona, Kansas, Maine, Michigan, New Mexico, and Wisconsin. For further information, see U.S. Library of Congress. Congressional Research Service. *Federal Impact Aid and State School Finance Equalization Programs*. CRS Report for Congress No. 87-589 EPW, by K. Forbis Jordan. Washington, 1987.

[15]Section 2 provides financial assistance to local school districts in which the Federal Government owns significant amounts of property, thereby reducing local property tax revenues used for schools.

[16]Districts eligible for additional payments under section 3(d)(2)(B) have 3(a) and 3(b) enrollment of at least 50 percent of their total attendance and must meet other statutory requirements.

(2) The products of these calculations are then multiplied by the total number of federally connected students of each type in average daily attendance in the school district.

Other circumstances and determinations help specify the actual section 3 payments districts receive. The Act provides the minimum 3(a) payments and payments for "super b" districts[11] would be based on the FY 1987 payment rate.[12] Moreover, some districts receive additional section 3 payments because of special circumstances and needs. For example, section 3(d)(2)(B) authorizes the Secretary of Education to make additional impact aid payments to school districts where at least 50 percent of the total average daily attendance is comprised of federally connected students and where the district cannot provide educational services equivalent to comparable school districts in the State.

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[10](...continued)
nontaxable Federal property; thus either their residence or place of employment is subject to local taxation. As a result, less local tax revenue is lost. In addition, the authorized payment rate for handicapped children of military parents and handicapped children residing on Indian land is increased by 50 percent of the LCR (section 3(d)(2)(C)) and by 25 percent for other children living on Indian land (section 3(d)(2)(D)) because the local school district presumably must provide more expensive school programs to meet the special educational needs of these students. In this regard, the Senate Labor and Human Resources Committee noted its--

> concern for the additional financial burden placed on school districts that educate federally connected handicapped children. In many cases, military families with handicapped children are given special assignments to areas with school districts that have outstanding special needs programs. While many districts welcome such children into their schools, the Committee is concerned that these districts assume a particularly large financial burden because of the special services required for these children (U.S. Congress. Senate. S. Rept. 100-222 to accompany S. 373. p. 51).

[11]These are districts for which 3(b) students make up at least 20 percent of the average daily attendance.

[12]Section 5(e) specifies that the minimum 3(a) or super 3(b) allocation a district would receive would be the lesser amount of: 1) the product of the payment per pupil for the category of student paid to the district in FY 1987 times the number of children in average daily attendance in that category for the fiscal year in question and 2) the payment for that category of children the district received in FY 1987. The minimum grant amount would not apply if the status of the district has changed (e.g., a "super b" district has become a "regular b") or appropriations are insufficient for full payment under this provision. In the latter case, amounts would be reduced proportionately. P.L. 101-26 amended section 5(e) for situations in which districts received no 3(a) payment in FY 1987 and experienced an influx of 3(a) children after that fiscal year. Section 722(d) of P.L. 101-589 made similar modifications for "super b" districts.

How Are Maximum Authorized Payments Determined?

A local school district's maximum authorized section 3 payment (which is sometimes referred to as the district's "entitlement") is derived from the number of federally connected students multiplied by a percentage of the school district's local contribution rate (LCR). The LCR is the average current educational expenditure per pupil derived from local (as opposed to Federal or State) revenue sources of districts "generally comparable"[8] to the district for which payments are being calculated. The LCR must be at least one-half the national average per pupil expenditure or one-half the State's average per pupil expenditure, whichever is greater.[9]

Maximum section 3 payments are the product of two calculations:

(1) The school district's LCR is multiplied by the percentage assigned to the specific type of federally connected student. In general, the authorized payment rate for section 3(a) children is 100 percent of the LCR (section 3(d)(1)(A)). The authorized payment rate for students classified as section 3(b) children is 25 percent of the school district's local contribution rate (section 3(d)(1)(B));[10]

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[8]See 34 CFR Ch. II, §222.33 for regulations on identifying comparable local educational agencies (LEAs).

[9]LCRs for school districts in States with relatively low per pupil expenditures generally equal one-half the national average per pupil expenditure; those in States with relatively high per pupil expenditures usually equal one-half their State's average per pupil expenditure or one-half the average per pupil expenditure of generally comparable school districts in their State.

[10]The rate for section 3(a) children is higher because their parents live **and** work on Federal property, which is not subject to local taxation. The rate for section 3(b) students is less because their parents either live **or** work on such

(continued...)

Source: U.S. CRS Report for Congress. The Impact Aid Program Under Section 3 of Public Law 81-874. Congressional Research Service. The Library of Congress. January 25, 1991. pp. 5-9.

Appendix E

Impact Aid

Maintenance and operations

1993 BUDGET PROPOSAL

A total of $522,130,000 is requested for Maintenance and Operations activities in 1993, $221,578,000 less than the 1992 appropriation. For Section 3(a), $489,540,000 is requested, $81,000,000 less than the comparable 1992 amount. No funds are requested for section 3(b). For Section 3(d)(2)(B), the request provides $16,000,000, $14,000,000 less than the amount projected to be reserved in 1992 for 3(d)(2)(B) from the appropriation for 3(a) and 3(b). For Section 2, the request provides $16,590,000, the same amount provided in the fiscal year 1992 appropriation. No funds are requested for Section 3(e).

The request of $489.5 million for "a" payments represents continued Federal support at a reduced level for the education of these children. Payments for "a" students continue to be an important Federal responsibility. Even at the reduced level, the request would enable school districts to be paid nearly the same percentage of entitlement for those "a" children who, because of their numbers, represent a real burden to the local schools.

The Administration is again proposing several legislative changes that would increase equity in the program and improve the efficiency of the payment process. Most of these proposals were first made for fiscal year 1992.

First, the Administration proposes that districts be required to absorb the costs associated with the number of Section 3 children who make up the minimum eligibility threshold of at least 400 children or at least 3 percent of the total number of children in average daily attendance, whichever is less. This absorption policy would make payments under the program more equitable. Currently, districts that do not meet the minimum eligibility threshold receive no funds, while districts that meet the minimum threshold are paid for all of their federally connected children. The proposed change would thus eliminate this inequity in the formula and focus more funds on districts with higher concentrations of federally connected children.

The proposal would also increase equity in the distribution of these funds by minimizing the substantial differences in funding available to very similar districts under the current system of categorizing districts. Currently, "super a" districts, those that have 20 percent or more "a" children, are paid 80 percent of entitlement for all of their "a" children at "wave 1" of the statutory distribution formula, while "sub-super a" districts are paid only 60 percent of entitlement and "regular a" districts are paid 40 percent of entitlement. This formula results in some districts that have only a few more federally connected children than other comparable districts receiving substantially higher Impact Aid payments. This situation has resulted in a number of requests for special legislation to assist districts that have lost or will lose their status as "super a" or "sub-super a" and want to retain the

higher payment rate. To correct this problem, the Administration proposes to pay districts at the higher levels of entitlement only for the number of students that affect the districts' classification. For example, payments for "super a" districts would consist of 40 percent of entitlement for those "a" children who constitute up to 15 percent of average daily attendance (ADA), 60 percent of entitlement for those students at or above 15 percent but below 20 percent of ADA, and 80 percent of entitlement for those students at or above 20 percent. This policy would promote equity by compensating districts at the higher rate only for those students that, because of their numbers, create an extra burden, while the current formula compensates districts for all federally connected children at the highest payment rate applicable to the district.

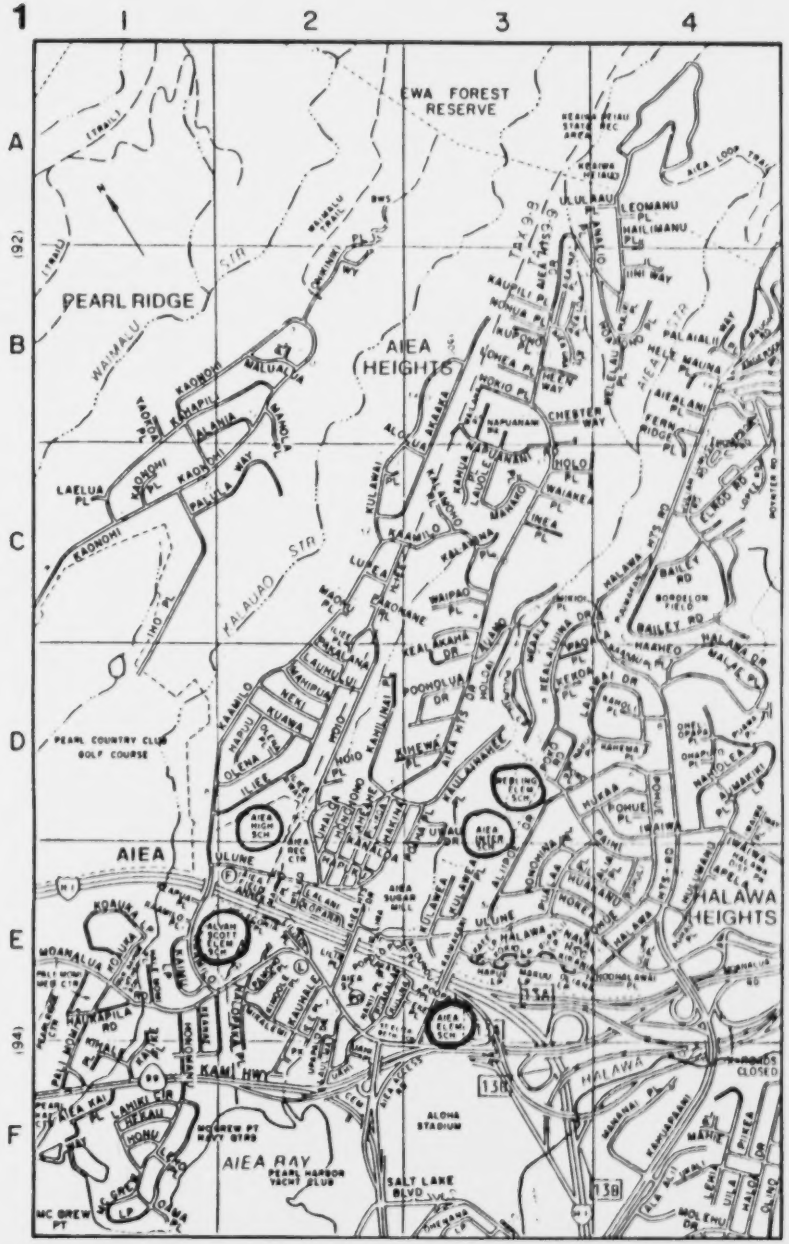
The request would provide no funding for "b" payments, those for children whose parents work on or who live on Federal property. No data have been found to document that "b" children create a special burden for school districts justifying Federal support, and the severe budget constraints preclude any funding for these payments.

The Administration's request of $16 million for Section 3(d)(2)(B), $14 million less than the amount projected to be needed for this purpose in 1992, would be sufficient to fund Section 3(d)(2)(B) because of the elimination of all "b" students from eligibility and entitlement calculations. Separate funding is proposed for this section, to remain available until expended, to facilitate the administration of these funds. Under current procedures, funds for Section 3(d)(2)(B) are reserved from the amounts available for Sections 3(a) and 3(b) until data are available to determine final 3(d)(2)(B) payments -- usually well into the following school year. This system has resulted in small, supplemental payments for all other Section 3 districts once final determinations for Section 3(d)(2)(B) have been made, a practice that is administratively burdensome and inconvenient to both the Department and the recipient LEAs. The proposed separate appropriation would allow the Department to make single awards for Section 3(d)(2)(B) after final data become available without disrupting regular "a" and "b" payments.

To further improve the Impact Aid payment process, the Administration proposes to allow Section 3 funding determinations to be based on prior-year enrollment data. This proposal responds to the concerns of the Appropriations Committees that payments should be made earlier in the school year, and is strongly supported by the National Association of Federally Impacted Schools. This change will enable eligible districts to receive their entire award early in the fiscal year, rather than after enrollment data are available for the current year, which is often not until spring or early summer. This proposal would also obviate the need for Section 3(e) payments, designed to compensate districts for decreases or cessation of Federal activities, since school districts experiencing declines in enrollment would be cushioned from the immediate effect of decreased payments by continuing to receive the higher payments calculated from the previous year's enrollment level. This change would afford these districts the opportunity to plan for diminishing Impact Aid payments in subsequent years. Therefore, the Administration proposes no funding for Section 3(e).

Source: U.S. Department of Education, Justifications of Appropriation Estimates to the Congress: Fiscal Year 1993 (Washington, 1992), pp. B-24-26.

Appendix F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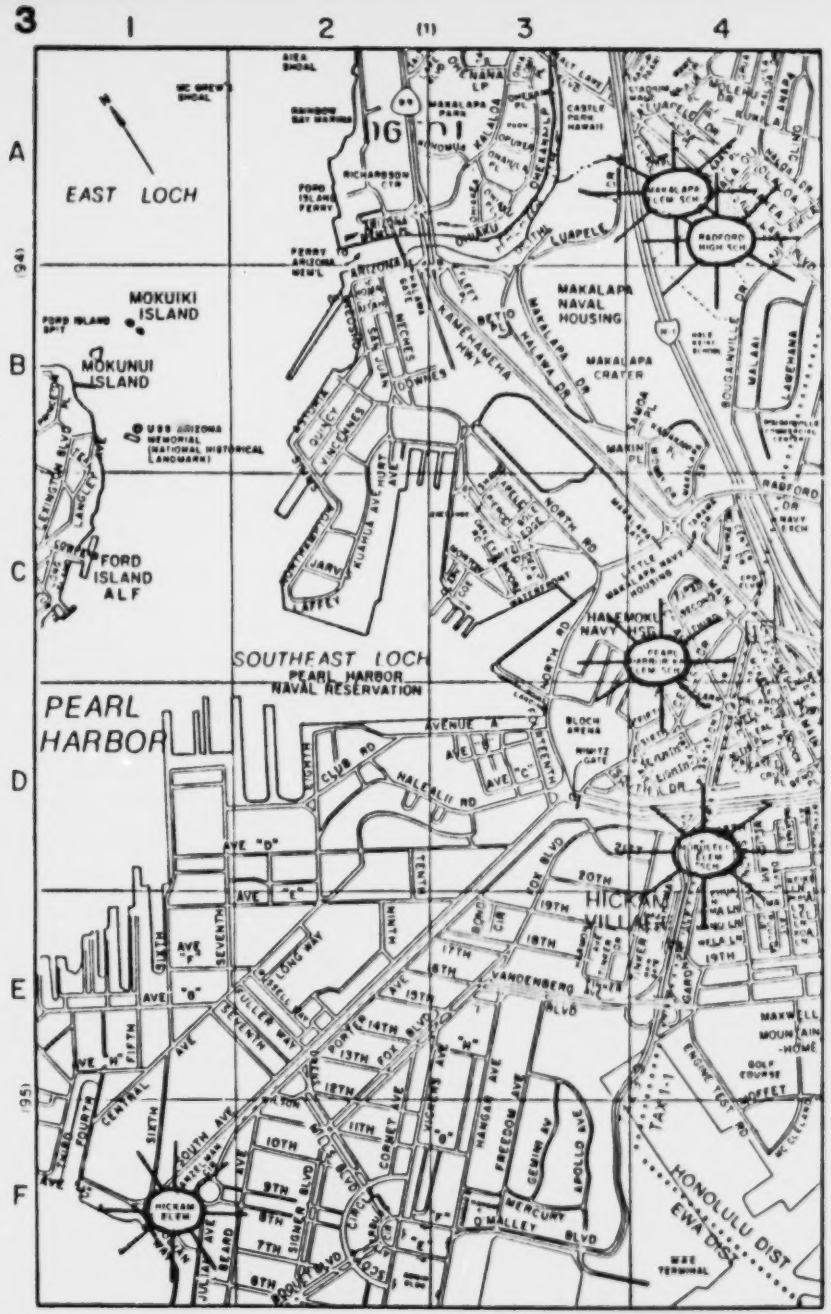
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PEARL HARBOR
MAKALAPA NAVAL HOUSING
MAKALAPA CRATER
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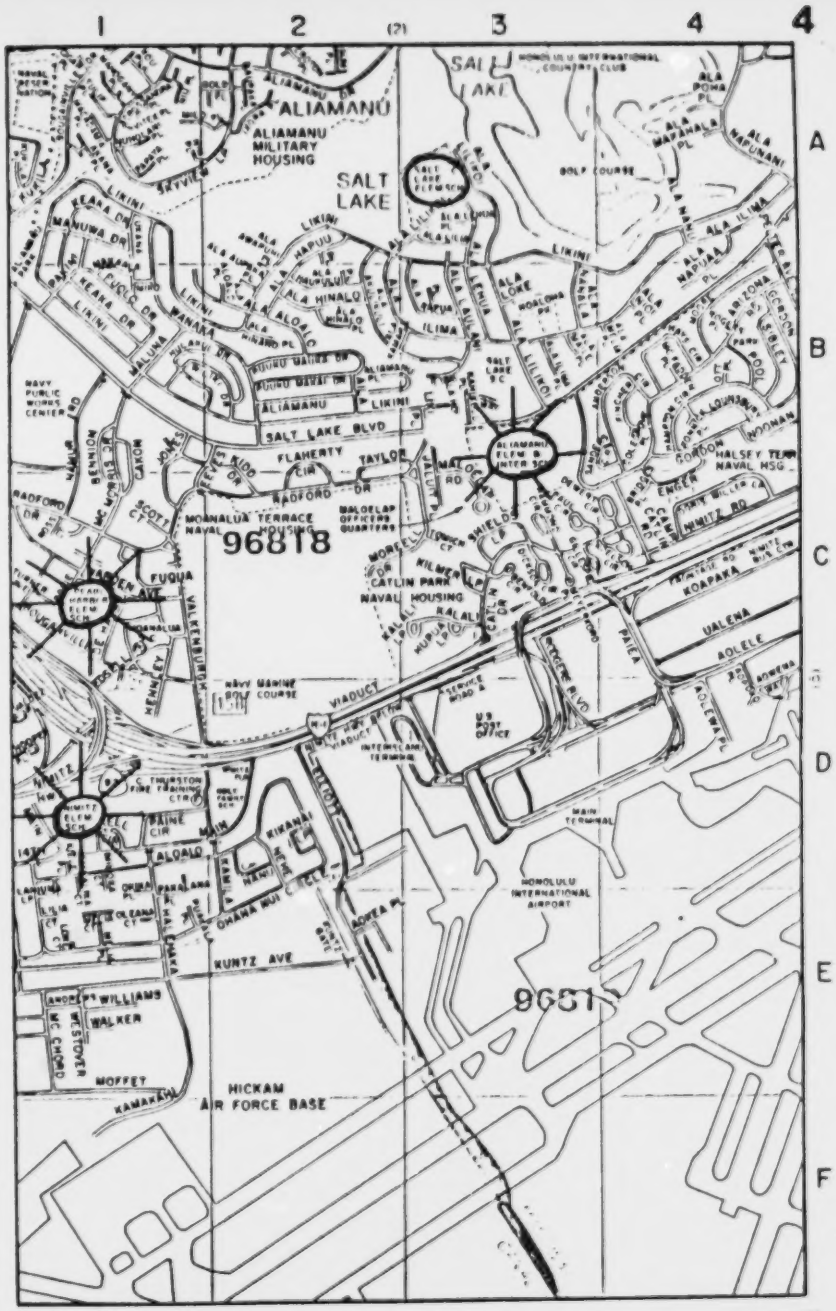
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CATLIN PARK NAVAL HOUSING
RALALI
HALSEY TERR NAVAL HSG
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VIADUCT
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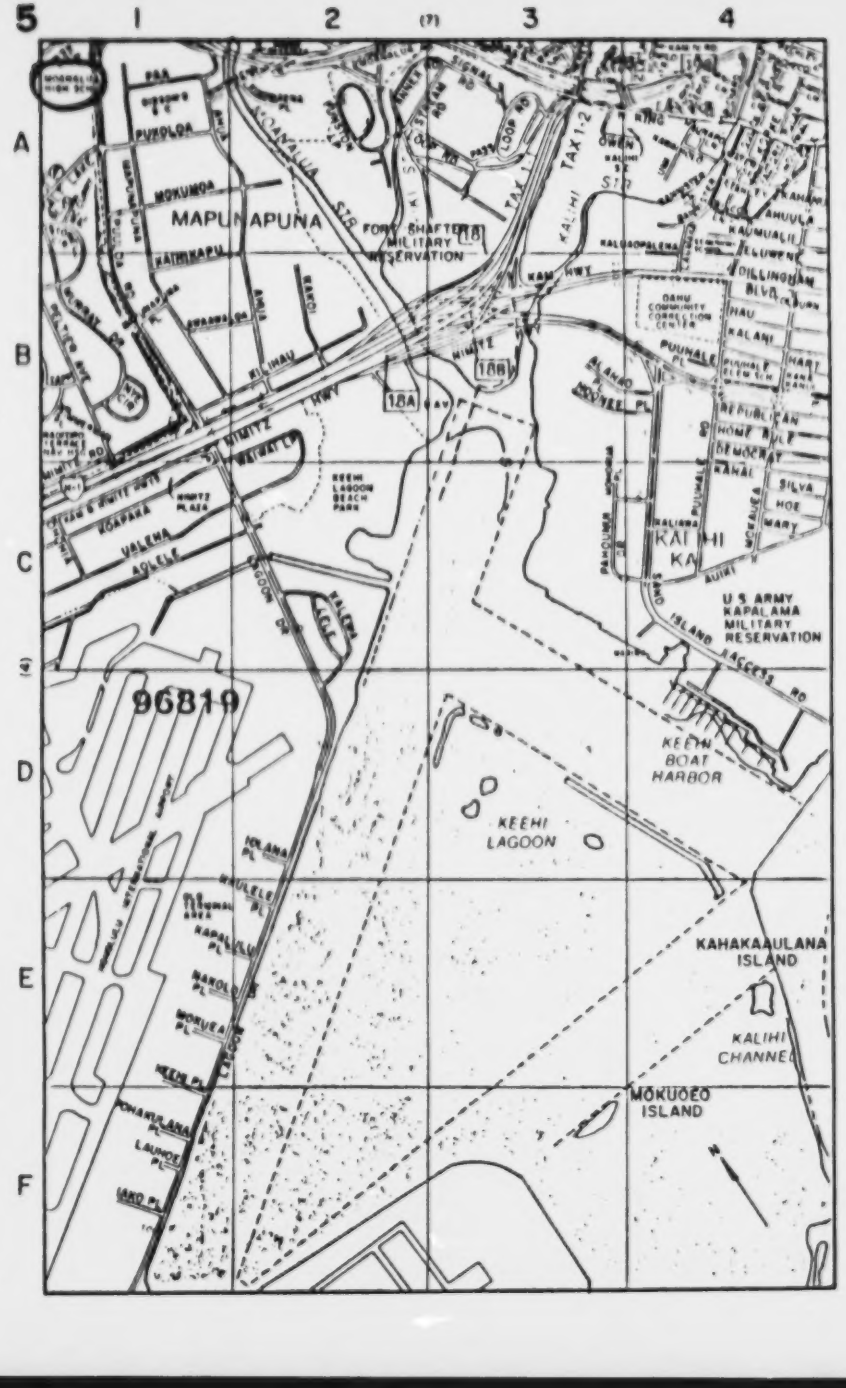
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VALEMA
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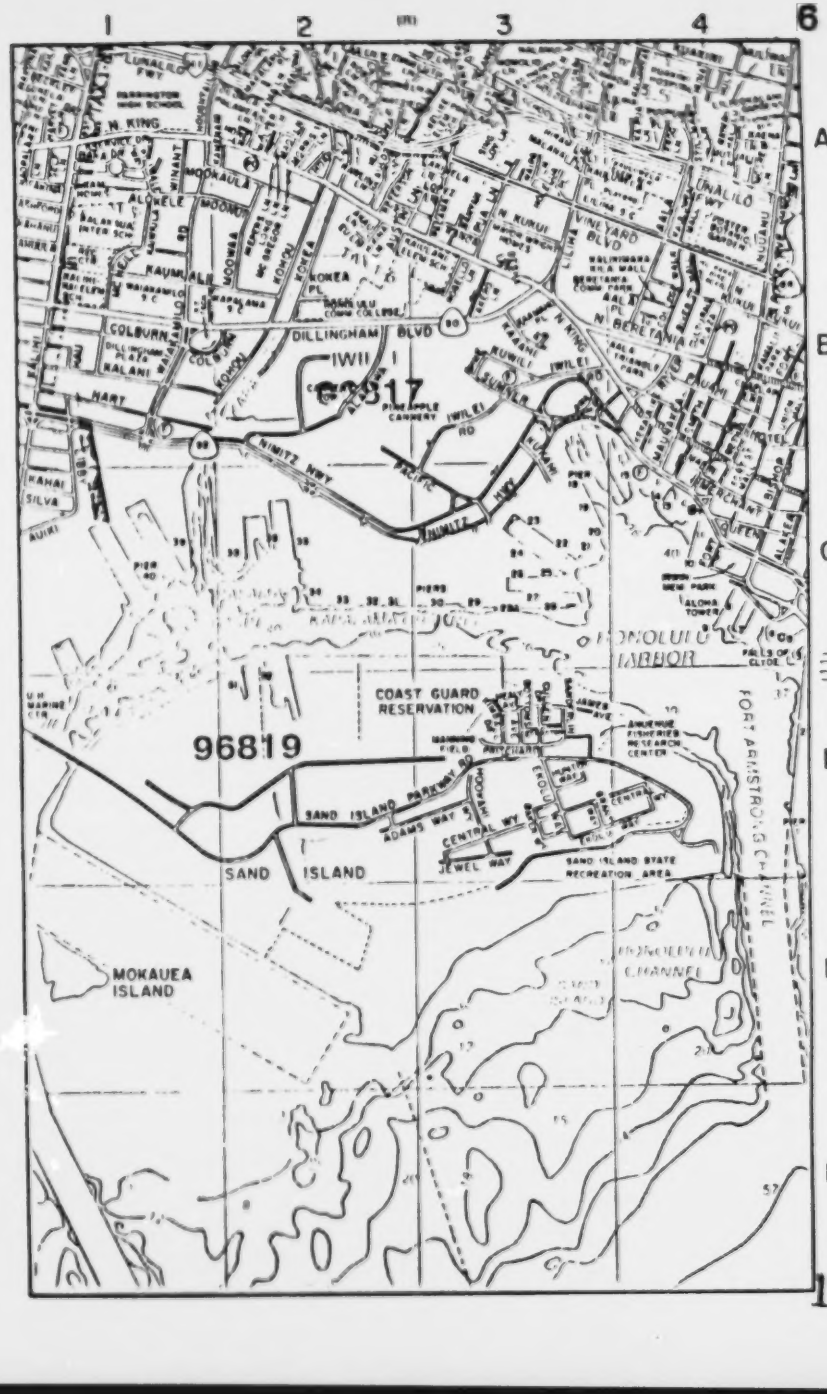
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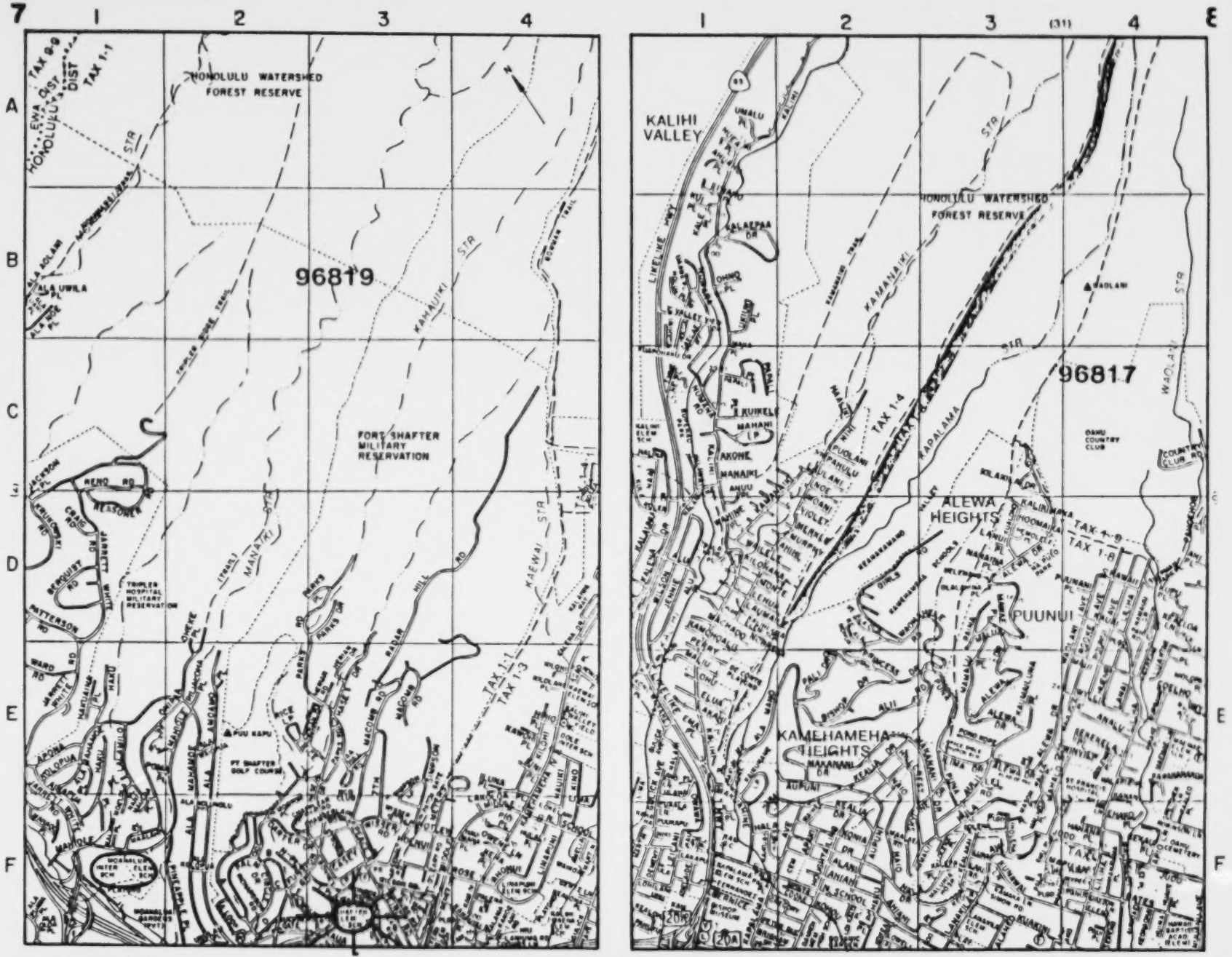

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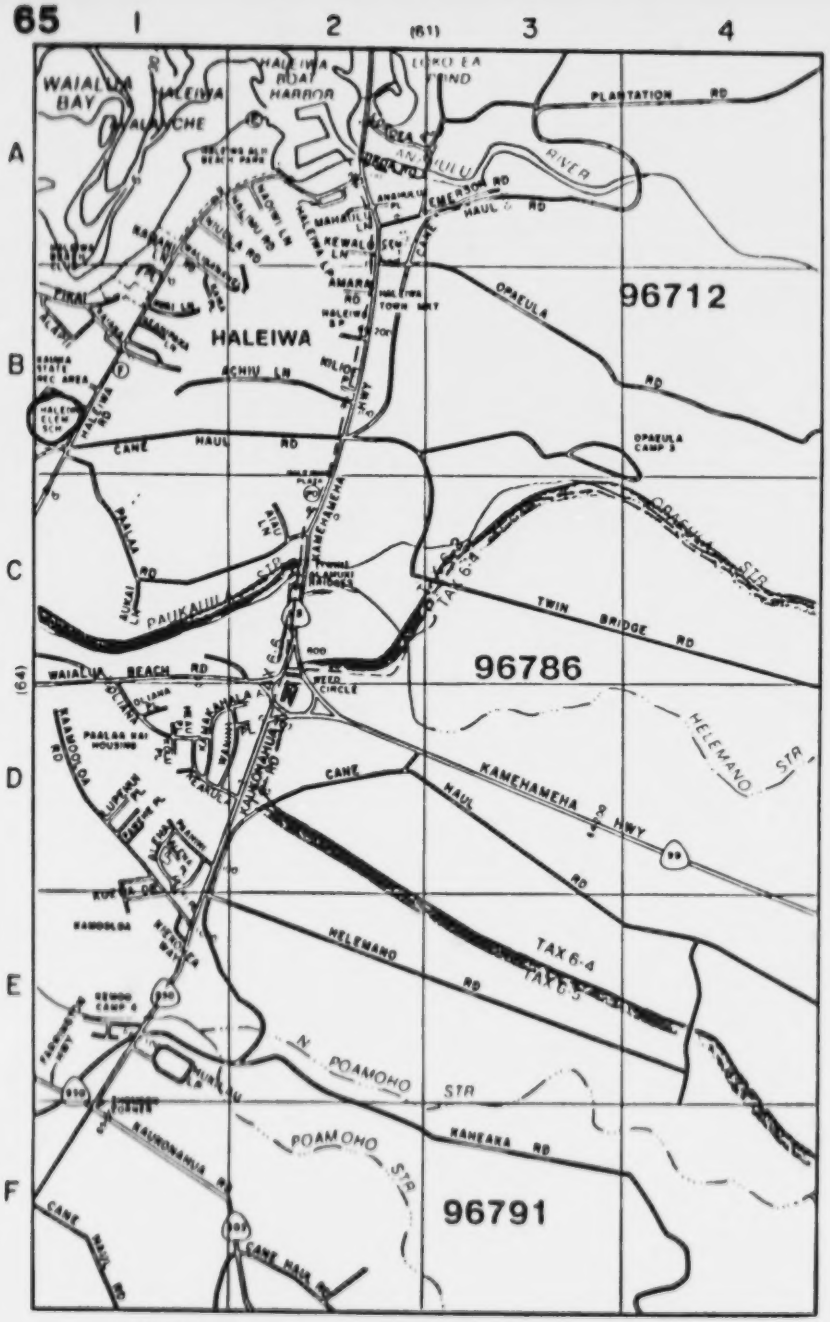
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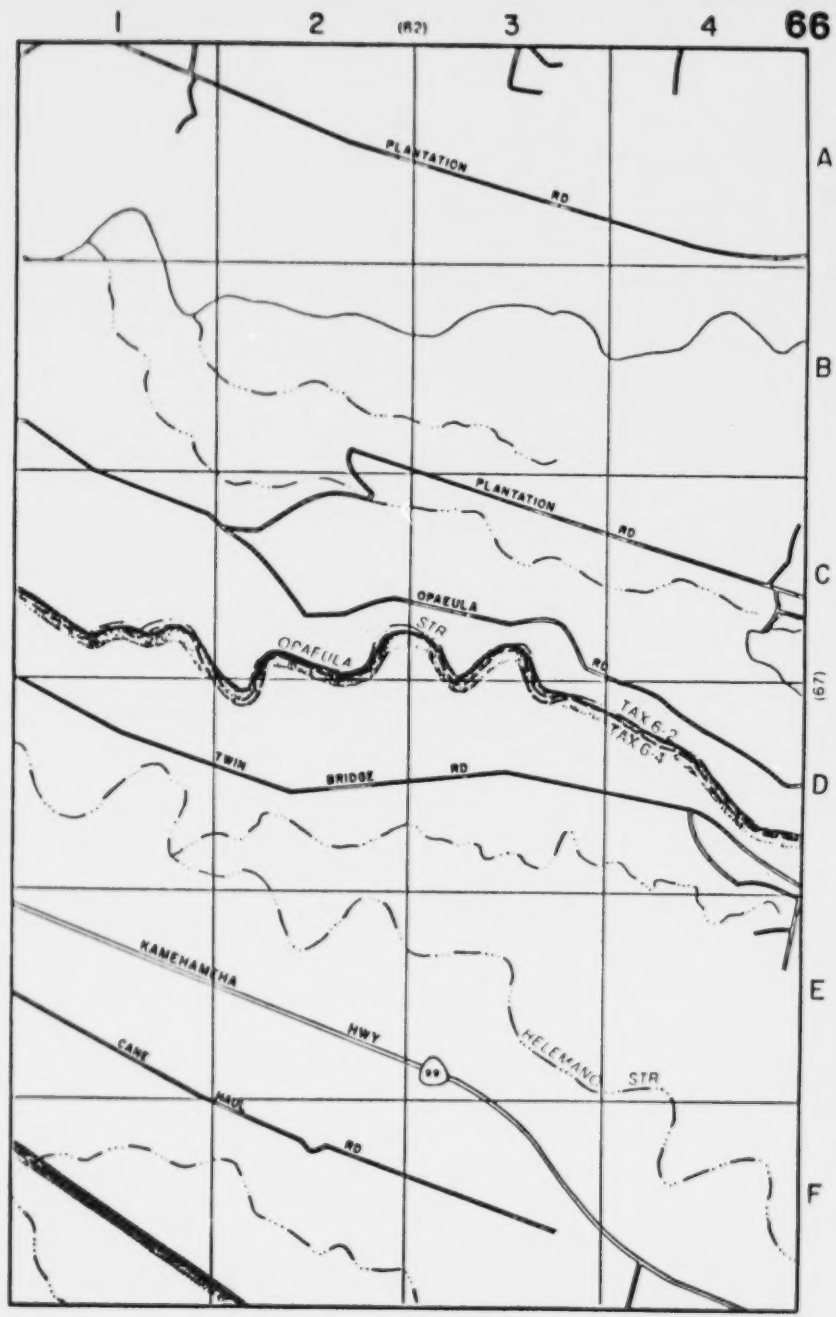
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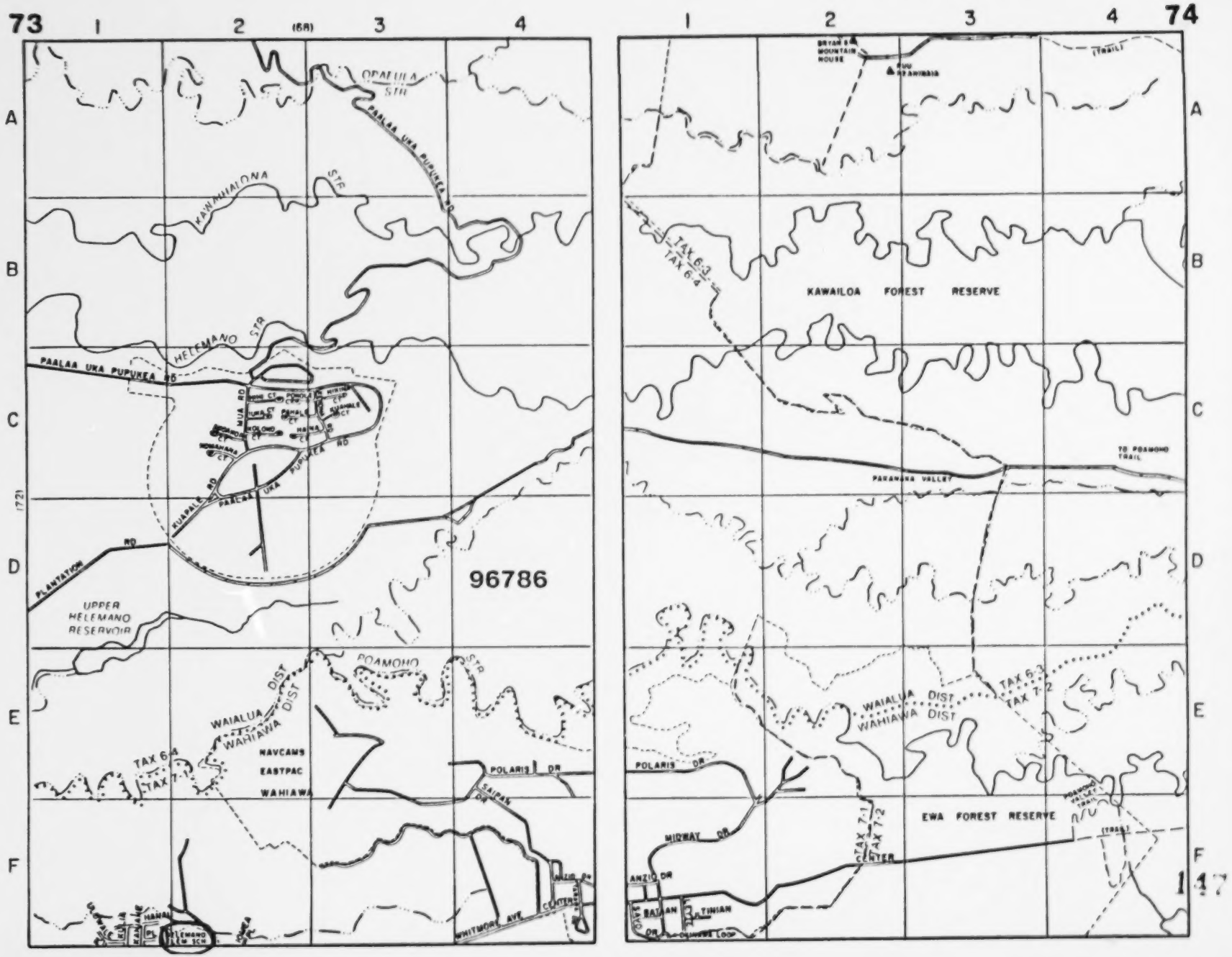
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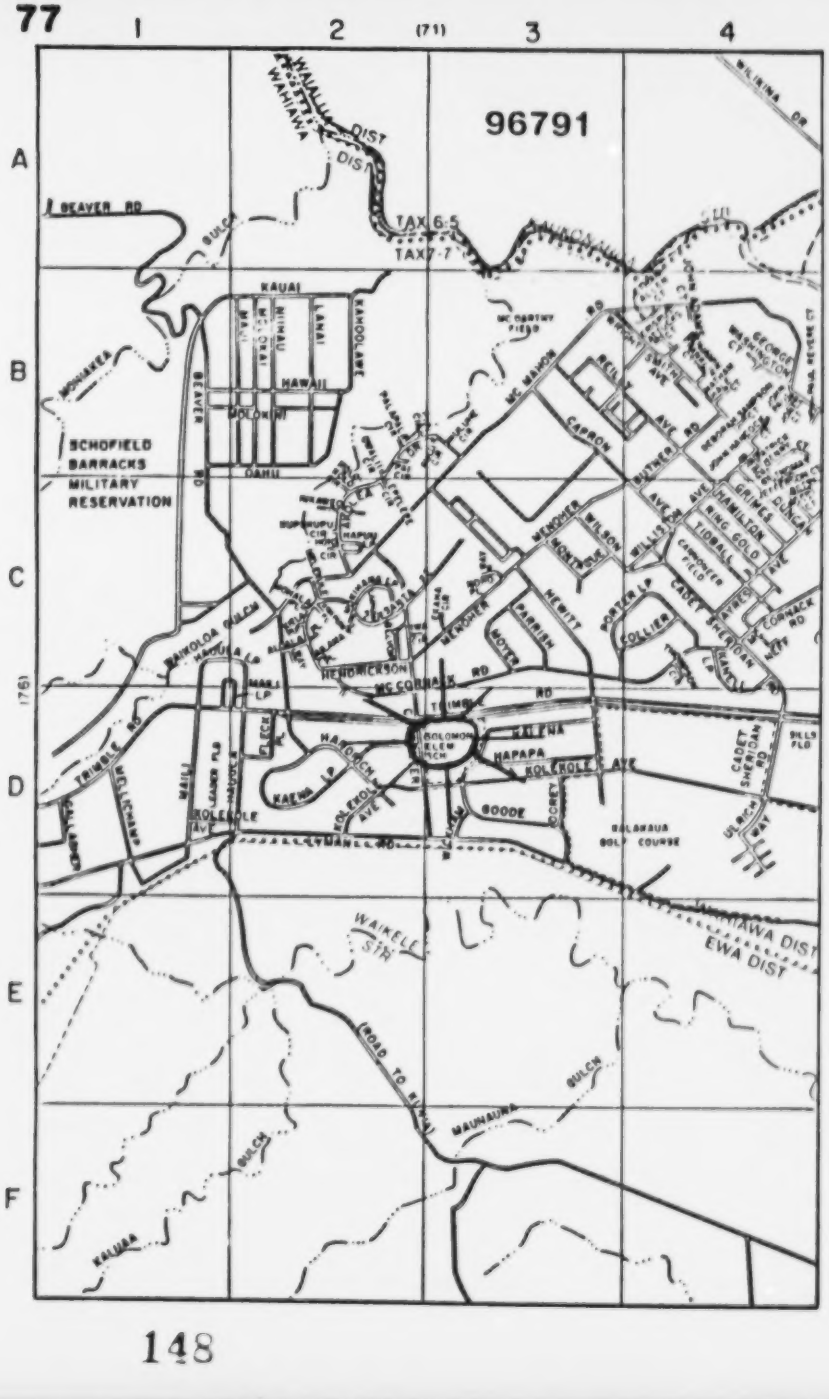
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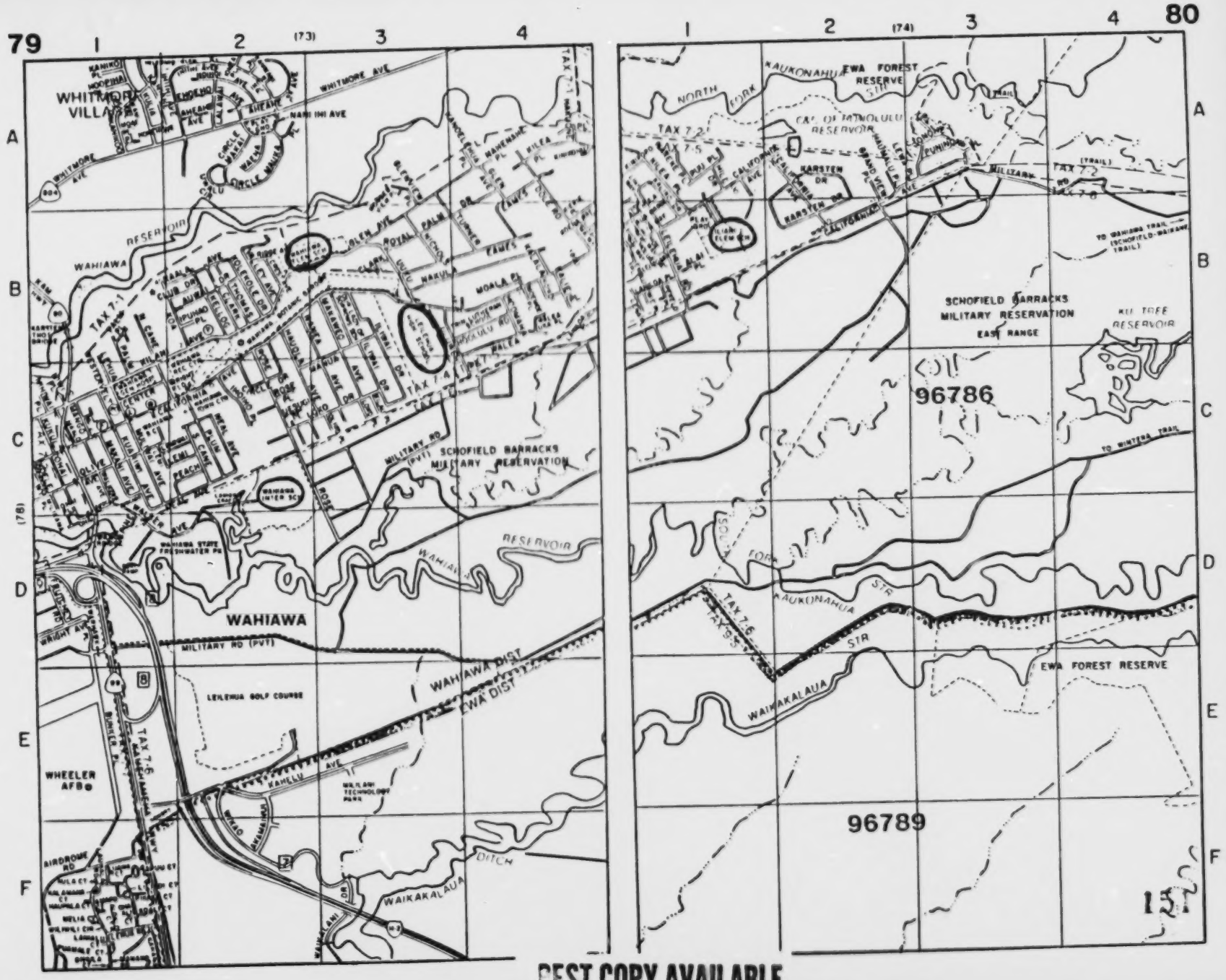

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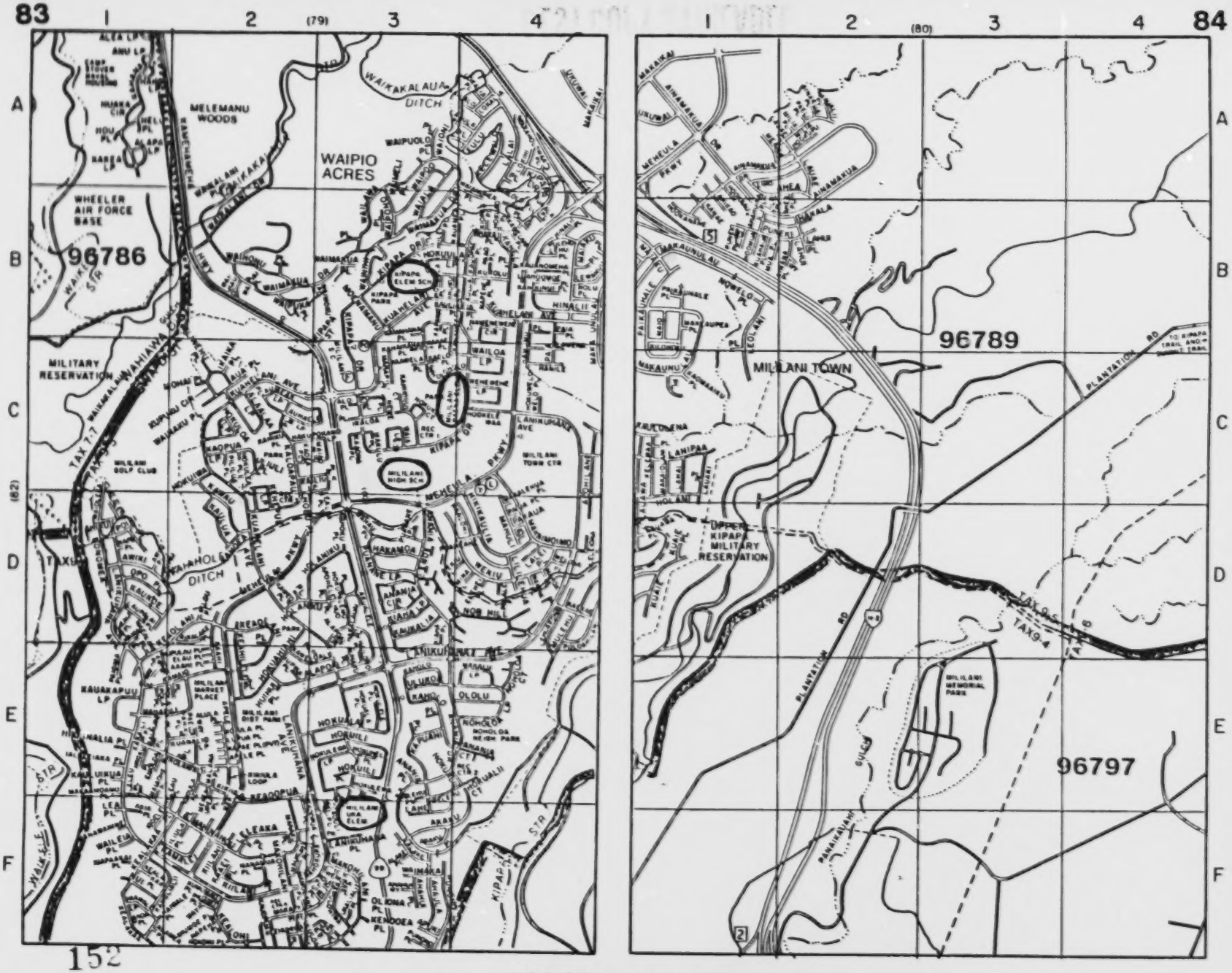

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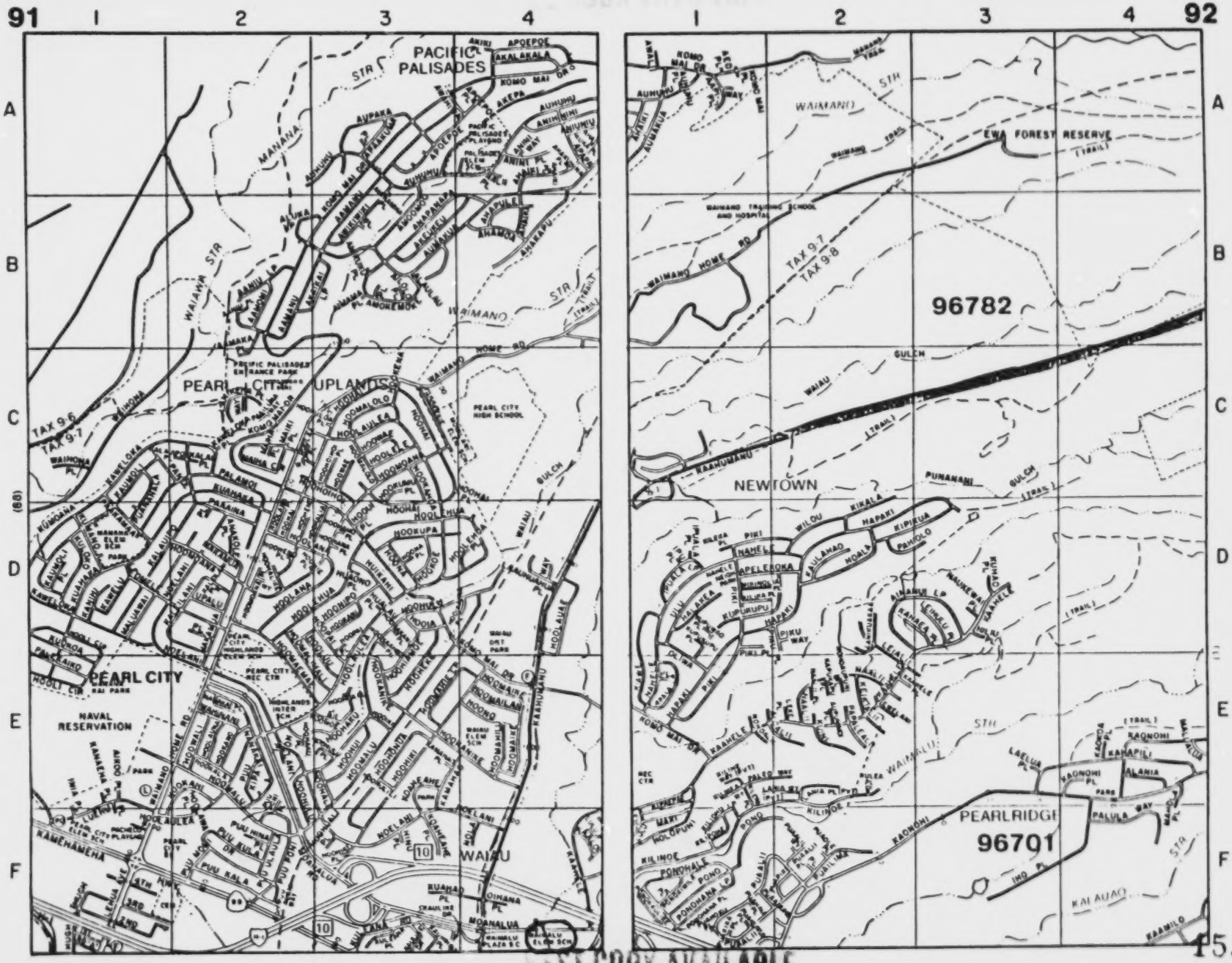

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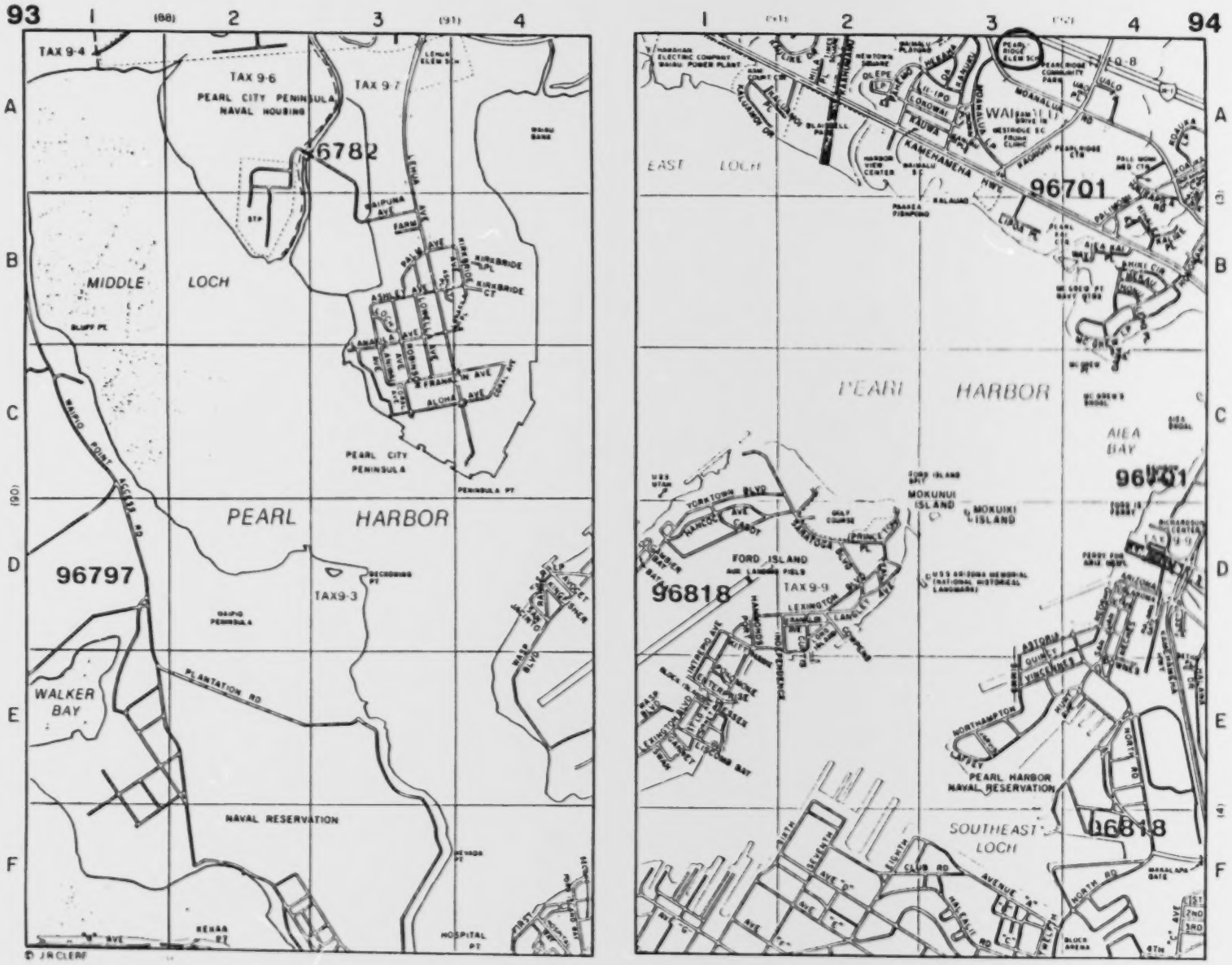

Source: Bryan's Sectional Maps of Oahu - 1992 Edition

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Appendix G

BILL ANALYSIS

BILL NO. HB 2679 **ANALYST** Susan McNicholas (2319) mm

SPONSOR Stern-Matijevich **DATE OF INTRODUCTION** 11/7/91

COMMITTEE Elementary & Secondary Education **DATE OF ANALYSIS** 4/3/92

COST TO STATE GOVERNMENT

Undetermined (Source: State Board of Education)

SYNOPSIS

Amends the School Code. Provides for the detachment from elementary, high, and unit school districts meeting certain criteria of that part of any such district located within a U.S. military base and provides for the formation of a new school district from the territory so detached. Establishes petition requirements and prohibits the regional board of school trustees with whom the petition is filed from denying the changes requested in a proper petition. Effective immediately.

BACKGROUND/ANALYSIS

Fort Sheridan Army base lies within Highland Park School District 111. The school district receives Federal Impaction Aid for the students who live in Fort Sheridan and attend the district's schools. For the 1991-92 school year, this will amount to approximately $813,000.

When the Army leaves Fort Sheridan, the Navy is scheduled to move in. As long as the same or a greater number of Navy children (as compared to the number of Army children) attend district schools, the district will continue to receive Federal Impaction Aid for those children.

If a lesser number of Navy children attend district schools, the Federal Impaction Aid will be reduced according to the following sliding scale: 1st year - 90% - $720,000; 2nd year - 90% - $648,000; 3rd year - 90% - $583,000; 4th year - 90% - $524,000; 5th year and thereafter - 0%.

ANALYSIS

House Bill 2679 provides that any elementary or high school district with 100 or more of its students residing on a military or installation, or a unit school district with 300 or more of its children residing on a military installation, shall have such military installation detached from the school district and a new school district created.

The petition for such detachment shall have been signed by a majority of registered voters living on the military installation or a petition adopted by resolution of the board of education. The petition shall be filed with the regional board of school trustees, who shall have no authority to deny the detachment and creation of a new school district.

Source: Illinois House of Representatives, Spring 1992.

Appendix H

HB2679 Enrolled LRB8708464THcd

AN ACT in relation to the creation of new school districts within the State of Illinois.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. The School Code is amended by changing Sections 7-1 and 7-2 as follows:

(Ch. 122, par. 7-1)

Sec. 7-1. Districts in one educational service region - changing boundaries.

(a) School district boundaries lying entirely within any educational service region may be changed by detachment, annexation, division or dissolution or any combination thereof by the regional board of school trustees of such region, or by the State Superintendent of Education as provided in subsection (1) of Section 7-6, when petitioned by the boards of each district affected or by a majority of the registered voters in each district affected or by two-thirds of the registered voters in any territory proposed to be detached from one or more districts or in each of one or more districts proposed to be annexed to another district. Registered voters shall be determined by the official voter registration lists as of the date the petition is filed. No signatures shall be added after the date the petition is filed. If there are no registered voters within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory.

Each page of the circulated petition shall include the full prayer of the petition, and each signature contained therein shall match the official signature and address of the registered voters as recorded in the office of the election authority having jurisdiction over the county. Each

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petitioner shall also record the date of his signing. Each page of the petition shall be signed by a circulator who has witnessed the signature of each petitioner on that page. The length of time for signatures to be valid, before filing of the petition, shall not exceed 6 months.

Where there is only one school building in an approved operating district, the building and building site may not be included in any detachment proceeding unless petitioned by two-thirds of the registered voters within the entire district wherein the school is located.

(b) Any elementary or high school district with 100 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, or any unit school district or any combination of the above mentioned districts with 300 or more of its students residing upon territory located entirely within a military base or installation operated and maintained by the government of the United States, shall, upon the filing with the regional board of school trustees of a petition adopted by resolution of the board of education or a petition signed by a majority of the registered voters residing upon such military base or installation, have all of the territory lying entirely within such military base or installation detached from such school district, and a new school district comprised of such territory shall be created. The petition shall be filed with and decided solely by the regional board of school trustees of the region in which the regional superintendent of schools has supervision of the school district affected. The regional board of school trustees shall have no authority to deny the detachment and creation of a new school district requested in a proper petition filed under this subsection. This subsection shall apply only to those school districts having a population of not fewer than 1,000 and not more than 500,000 residents, as ascertained by any special or general

census.

The new school district shall tuition its students to the same districts that its students were previously attending and the districts from which the new district was detached shall continue to educate the students from the new district, until the federal government provides other arrangements. The federal government shall pay for the education of such children as required by Section 6 of Public Law 81-874.

(Source: P.A. 87-210.)

(Ch. 122, par. 7-2)

Sec. 7-2. Districts in two or more counties - Change of boundaries. Boundaries of existing school districts lying within two or more counties may be changed by detachment, annexation, division, dissolution or any combination thereof by the concurrent action of, taken following a joint hearing before, the regional boards of school trustees of each region affected. For purposes of this Section and Section 7-6, an educational service region shall be deemed to be a region affected if any portion of the territory which the petition seeks to have detached from any school district is located in the region. The petition may be by the boards of each district affected, or by a majority of the legal voters residing in each district affected, or by two-thirds of the legal voters residing in any territory proposed to be detached from one or more districts or in each of one or more districts proposed to be annexed to another district. The original petition shall be filed with the regional board of school trustees of the region in which the territory being detached is located or if territory is being detached from more than one region then the petition shall be filed with the regional board of school trustees of the region in which the regional superintendent has supervision over the greatest portion of such territory. A certified true copy of the petition shall be filed with the regional board of school

trustees of each other region affected.

The regional board of school trustees in whose region the joint hearing on the original petition is conducted shall send a certified true copy of the transcript of the hearing to each other region affected. If there are no legal voters residing within the territory proposed to be detached from one or more districts, then the petition may be signed by all of the owners of record of the real estate of the territory. The annexing district is that district to which territory is proposed to be added.

Where there is only one school building in an approved operating district, the building and building site may not be included in any detachment proceeding unless petitioned by two-thirds of the eligible voters within the entire district wherein the school is located.

After September 23, ~~the effective date of this amendatory Act of~~ 1983, no petition shall be filed under Sections 7-1 and 7-2 to form a new school district under this Article except that such a petition may be filed under Section 7-1 to form a new school district where the boundaries of such new school district lie entirely within the boundaries of a military base or installation operated and maintained by the government of the United States.

(Source: P.A. 86-743.)

Section 2. This Act takes effect upon becoming a law.

Source: Illinois House of Representatives, Spring 1992.

Appendix I

STATE OF ILLINOIS
87th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

141st Legislative Day May 13, 1992

Speaker Satterthwaite: "House Bill 2679. Mr. Clerk, read the Bill."

Clerk McLennand: "House Bill 2679, a Bill for an Act in relation to the creation of new school districts within the State of Illinois. Third Reading of the Bill."

Speaker Satterthwaite: "Representative Stern."

Stern: "Madam Speaker and Members of the House. For my district, this is the most important Bill I am carrying this year, and I hope you will all listen carefully. This is a shot off the bow of the Federal Government which I hope you will join in helping me fire. In my area, Fort Sheridan has sent children to the local schools over a period of many years. They pay an impact aid, $2,100 per student. It costs our school districts $6500 per student. We have tried every way we could. We have visited with our senators, we have visited before committees, we have talked all the way to the White House on the subject of increasing impact aid. In my county, we have one nearly-bankrupt school district, and one school district in my area which is about to consolidate with two others in order to save its fiscal skin. This Bill would permit a school district which includes a military base to disconnect the military base. We are trying to get the attention of the Federal Government. It is like hitting the mule over the head with a 2' by 4'. Are you listening, Ladies and Gentlemen in Washington? We mean it. You are hurting us. We have got to have relief. I ask you to vote 'aye' on this Bill, and let us see if we can get their attention. I will answer questions, of course."

Speaker Satterthwaite: "Representative Coulishaw."

Coulishaw: "Thank you very much, Madam Speaker, Ladies and Gentlemen of the House. I have discussed this Bill at some

length with Representative Stern. I certainly understand her motivation in introducing this, and indeed it is a matter of firing a rather loud shot at the Federal Government for failing to do something that is harmful to students. It is not right for the Federal Government to do that. I stand in strong support of Representative Stern's Bill. Thank you, Madam Speaker."

Speaker Satterthwaite: "Representative Davis."

Davis: "Yes, Madam Speaker, will the Sponsor yield?"

Stern: "Of course."

Davis: "Okay, my question is if children are attending these base schools and the Federal Government is not providing for them, what will happen to them?"

Stern: "The children are not attending base schools. The children are attending the public schools in Highland Park. And according to Section 6 of Public Law 81.874 on impact aid, such arrangements to provide free education may also be made for children of members of the armed forces on active duty, if the schools in which free education is usually provided for such children are made unavailable to them as a result of official action by state or local government authority. In order words, the Federal Government would have two options. Well, have myriad options. One option would certainly be to contract with the local schools by paying a tuition per child to send them, as they now do, to the local schools. Another option would be to form a base school and send the youngsters there, and the Federal Government pay its way. I want you to understand that the Federal Government pays the full cost of students in West Point, New York; of students in Fort Knox, Kentucky; students of military personnel in Germany are fully paid for. It is only in other states,

and Illinois is certainly one of the stepchildren in this regard, that insufficient funds are provided for the education of military children."

Davis: "Would this prove disruptive, Representative, to the children who are now attending school in Highland Park?"

Stern: "It might prove disruptive for a brief time. You have to understand, we have a long way to go before we have the full attention. We still have to go through the Senate, we have to persuade the Governor of the correctness of our position. We have not heard one word from Washington on this question, and this Bill has been in the hopper for several months."

Davis: "We have a fine Senator called Paul Simon down there in the Senate in Washington, and it would truly appear to me that we would do the children of Highland Park and those men and women who are in the service and their children a disservice to disrupt their education in the middle of the stream when we could certainly provide remedy by asking our honorable Senator Paul Simon, and soon-to-be Senator Carol Mosley Braun, to immediately address the situation of the children in Highland Park whose families are service members who are now going to the Highland Park school. I think it appears a bit, I just don't want to say un-American, but it truly concerns me that we would not consider the disruption to these children, but immediately uproot them because you're not getting money from the Federal Government. It would appear to me that we would try some avenues of questioning, some avenues of requesting, some avenues of using our Representatives at the federal level to bring about a remedy, rather than dealing with this federal problem at the state level."

Stern: "I have the feeling... May I respond, or are there other

questions? Well, we have really spoken to both Senators at great length. There has been testimony before federal committees on this. Our people have traveled back and forth to Washington on a regular basis. Senator Simon has not been able to help. Senator Dixon has not been able to help. And, with all due respect, I'm not sure Senator Carol Mosley Braun will be able to help unless we take a very strong, outspoken position. You know the Boston Tea Party was a little un-American, too. We watered down all that good water in Boston Harbor, for what avail? Taxation without representation. Damn it, they're going to listen to us this time."

Davis: "Well, as Acting Chair of Elementary (sic - and) Secondary Education in the State of Illinois, I find that any, any legislation that isn't needed on an immediate basis is truly not worthy of our disruption of the education of children whose parents are serving in the military of this country. We have men and women who will go to Desert Storm tomorrow if called upon, and yet we're saying these peoples' children are not worthy of going to school in Highland Park. Well, I say vote no on this un-American piece of legislation."

Speaker Satterthwaite: "Representative Wennlund."

Wennlund: "Thank you, Madam Speaker. Will the Sponsor yield?"

Speaker Satterthwaite: "She indicates she will."

Wennlund: "It's my understanding that in approximately six months Fort Sheridan will be closed by the Federal Government. Is that correct?"

Stern: "I'm sorry, I've lost track of the speaker. Who's speaking?"

Speaker Satterthwaite: "Representative Wennlund."

Stern: "Ah, yes, Fort Sheridan is closing, and the Navy is moving

in."

Wennlund: "So that there will still be the same amount of students involved?"

Stern: "That's correct, there will be a lot of youngsters, yes."

Wennlund: "What impact will this have on other school districts in Illinois?"

Stern: "We hope it will have the effect of generating some action from the Federal Government to increase impact aid. We love the children of Fort Sheridan. They are a wonderful resource for the children of our area, for the public schools. We only hope by this Bill to make the point that we are dead serious, that we really care about talking to them. They have chosen to ignore us in every area of negotiation on Fort Sheridan."

Wennlund: "The fiscal note filed by the Illinois State Board of Education indicates that there will be a loss of federal impact aid of about $8.3 million, and a loss of general State aid to districts in the amount of $2.8 million."

Stern: "The Illinois State Board of Education has taken, in my view and in the view of the superintendents of schools in my area, a very prejudiced position. They have chosen to ignore that Section 6, that I read to you a moment ago, which says that the Federal Government will provide education. They have put the worst case scenario before you on the impact, on the...what do you call em...the revenue."

Wennlund: "They seem to indicate that this Bill would affect approximately seven schools districts but 5,100 students who will then not have a school district at that point."

Stern: "There are school districts available. We are happy to negotiate with them on the basis of a contract per student basis. We are happy to rent to them buildings, to deal

with them with personnel. These youngsters are not going to go ignored. We care about them."

Wennlund: "The fiscal note also indicates that the impact of creating new school districts and new school infrastructure for some 5,100 students, averaging at about $3,500 per pupil, would be about $17.5 million."

Stern: "I think the State Board of Education is dead wrong."

Wennlund: "How do we... What certainty is there in the Bill that would assure us that these 5,100 students would indeed have the entire cost paid for by the Federal Government, whether it be by contract, or..."

Stern: "We're not... We are.... We have no guarantees for you, sir. We have done everything we possibly can do to talk to the Federal Government about this, what has become a very burdensome situation. I cannot tell you that they are going to hear us now. But I think that if we make a concerted effort, and certainly this is a Body that fights back against mandates handed down to us, this is an onerous mandate indeed, that has been ignored far too long."

Wennlund: "Can you tell me what the basis, or what you feel is the reason why the State Board of Education is opposed to this?"

Stern: "The State Board of Education testified before the committee about its concerns for the youngsters. We care about those youngsters, too. I would like to make the point that that bipartisan Committee on Elementary and Secondary Education, the temporary Chairman not withstanding, (oh, it's going to be cool on this row from now on) the temporary Chairman notwithstanding, voted unanimously to send this Bill to the Floor."

Wennlund: "Thank you very much."

Speaker Satterthwaite: "Representative Matijevich."

Matijevich: "Madam Speaker, Ladies and Gentlemen of the House, I'm a Co-Sponsor of this Bill; however, I don't want the Navy nor my school district to get the feeling that I want the Navy to get out of our school district. None of us want that, nor does Grace Mary Stern want that. My school district, the North Chicago School District, pays the highest, property tax rate in the whole Lake County. Now Lake County -- you've heard a little bit about Lake County, it's something like DuPage county -- it's got a high, property tax rate. However, my community is about 70% minority. There's lot of poor people in my community. There's a middle income people in my community. They cannot stand more taxes, and the school district understands that. They are right by Great Lakes Naval Training Center, and at one time the North Chicago School District, because of the federal impact aid, was one of the better-financed school districts in the county. That is no longer the case. It has now gotten so bad that my school district is not only on the school...the school board...the State School Board's watch list, they are being threatened that the state may have to take over our school district. That's the condition of our school district. It is mainly because of the fact that we have lost that federal impact aid. Now, what Grace Mary Stern is trying to do, she isn't trying to disrupt any school, she is trying to tell the Federal Government, 'Let's live up to your responsibilities.' We have met with, as she said, with Congressman Porter, with Senator Simon's staff, Senator Dixon's staff, and all of them tell us that the monies in the Education... Federal Office of Education are limited and each year the federal impact aid is being reduced. However, however, there is a source that can be tapped.

And that is the Department of Defense revenues. Now, isn't it logical that revenues that are under the Department of Defense ought to be used for impact aid for students; military establishments -- their dependents, their kids? That makes eminent sense to everybody. Now, what Grace Mary Stern is trying to do, and I think everybody, including her seat-mate, ought to help her to wake up the Federal Government. You know, this trickle-down theory we're talking about, we're talking about the education of our kids. I fear the day, if this doesn't happen, if some aid doesn't come about, what's going to happen to my school district in North Chicago? It is in bad shape, and they cannot go to the taxpayers. Does anybody here think that a minority community, 70% minority, ought to have the highest tax rate in the whole county? I don't think anybody believes that. So you ought to help Grace Mary Stern. I am going to vote 'aye'. And I wanted to tell the Navy that they do a good job, that we want their kids in our schools, we want them badly, but we want the Federal Government to live up to its responsibility and provide the resources it should."

Speaker Satterthwaite: "Representative Frederick."

Frederick: "Thank you, Madam Speaker, Ladies and Gentlemen of the House. I also rise in support of this very fine Bill. I remember, Ladies and Gentlemen, in the '40s and '50s, the impact aid that was offered to school districts of North Chicago and Highwood were fair and just. But every year since then, the Federal Government has absolutely abrogated its responsibility to these children. All we're trying to do, is to alert the Federal Government that they are not being fair to these school children. So I ask you all to vote 'aye' on this good Bill."

Speaker Satterthwaite: "Representative Flinn. Representative Monroe Flinn."

Flinn: "Madam Speaker, I move the previous question."

Speaker Satterthwaite: "The Gentleman moves the previous question. All in favor say 'aye', opposed, 'nay'. The ayes have it, and the previous question is moved. Representative Stern, to close."

Stern: "I only want to add one more thing: I am smitten to the heart with the charge of 'un-Americanism'. This is about as American as a Bill can get. We are protesting in the most vigorous way we can find against what we believe to be injustice. I ask your 'aye' vote."

Speaker Satterthwaite: "The question is, 'Shall House Bill 2679 pass?' All in favor vote 'aye', opposed vote 'no'. Voting is open. Representative Parcells, one minute to explain her vote."

Parcells: "Thank you, Madam Speaker. I join with Representative Stern in this Glenview Naval Air Station is also one of those air bases where they have asked again and again for the Federal Government to pay a reasonable amount of money. The people of Glenview have been taxed over and over again to pay for these children. They've done it very graciously, but it's unfair, and the Federal Government should ante up and pay for those children, hundreds and hundreds of them that are going to school in Glenview on the taxpayers of Glenview. I ask for your 'aye' vote."

Speaker Satterthwaite: "Representative Schoenberg."

Schoenberg: "Madam Speaker, Ladies and Gentlemen of the House, because of a potential conflict of interest with my wife's law firm I will be voting 'present'."

Speaker Satterthwaite: "Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the

record. On this question, there are 104 voting 'yes', 4 voting 'no', 5 voting 'present'. The Bill, having received the required Constitutional Majority, is hereby declared passed. Representative Hensel, on House Bill 2726. Mr. Clerk, read the Bill."

Clerk McLennand: "House Bill 2726, a Bill for an Act to amend the School Code. Third Reading of the Bill."

Speaker Satterthwaite: "Representative Hensel."

Hensel: "Thank you, Madam Speaker, Members of the House. House Bill 2726 amends the School Code. It provides that whenever boards of education determine that it is economically and practically feasible to do so, they shall ensure that all paper purchased by them and the schools and attendance centers in their districts for publication of student newspapers shall be recycled newsprint. What this is is just a little added recycling effort by some of the students that initiated this proposal in my district, and they would like to see that the student newspapers, when feasible, use recycled newsprint, and I ask for a favorable vote."

Speaker Satterthwaite: "Is there any discussion? Seeing no one seeking recognition, the question is, 'Shall House Bill 2726 pass?' All in favor vote 'aye', opposed vote 'no'. Voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, take the record. On this question, there are 111 voting 'yes', 1 voting 'no', 3 voting 'present'. The Bill, having received a Constitutional Majority, is hereby declared passed."

163rd Legislative Day June 26, 1992

Speaker Keane: "House Bill 2679, Representative Stern."

Stern: "Mr. Speaker and Members of the House, we wish to concur in Senate Amendment #1. Let me remind you about the Bill. This is the Bill which would permit a school district which includes a military base to disconnect the military base and in an effort to force the government...the US government to the table to talk to us about improving impact aid. They have bankrupted one school district in my county and nearly bankrupted another because they will not talk. The Bill, when it first came out of the House, passed out of here 104 to 4, and the 4 were concerned because they were afraid, my seat mate in particular, that the youngsters would be caught in the hinge. The Amendment in the Senate, I believe takes care of that concern, and I think it improves the Bill. The Amendment in the Senate, and the Senate Sponsor stands at my right, the Amendment in the Senate requires the youngsters in the event of such a disconnection to return to the schools at which they have been going and the government, the US federal government, stands responsible for their tuition. This strikes me as a immanently fair, decent, capital A American way to handle this situation. May I have any questions?"

Speaker Keane: "Representative Ropp."

Ropp: "Thank you, Mr. Speaker. A question of the Sponsor. I think this is a laudable idea, I guess the question is, 'Can you, through this Amendment, demand that the federal government pay for their education of these kids, or...if...we're kind of short of money in the state, can we demand that they come up with some additional dollars for a lot of things? How for sure are you that it's going to happen?"

Stern: "Well, this Bill is doing that. I suppose the future

alone will answer your question. I believe that it's absolutely legitimate that they pay for the expenses that they incur in each school district. I assume they are not going to take this lying down, Representative, and I would imagine this is not the last we will hear of this."

Ropp: "If I recall in committee you say that a number of other states, or at least several states where the federal government was in fact being more responsible in this situation..."

Stern: "Oh, yes."

Ropp: "...And what is it that these other states are doing that we either haven't been doing and if we haven't maybe this is what...the thing that's going to do it."

Stern: "In West Point, New York, and at Fort Knox, Kentucky the children are being subsidized to the tune of about $5,000 per youngster. In school district 111 in Highland Park, Illinois they are being subsidized to the tune of $2100 while it costing us over $6,000 per youngster. So, we feel that there is a unjust inequitable treatment being handed out."

Ropp: "I think this is a good, a good Amendment and a good Bill and a good conference Committee report. I just hope that the federal government would comply with the law that should the Governor sign it. Thank you."

Stern: "Well, they're going to have to defy us if they don't. We'll see. I ask your 'aye' vote."

Speaker Keane: "Representative Davis."

Davis: "Thank you. According to the Amendment, Representative, it states that the district from which the new district was detached shall continue to educate the students. Now, which district is the district from which the new district was detached?"

Stern: "The larger district which has detached the military...the land on which the military base is located, has been educating these youngsters. So, these youngsters will return to the schools they have been going to right along."

Davis: "They will not be on the base, is that what you're saying?"

Stern: "There is no school on the base."

Davis: "I say...they will not. I mean, they won't be going to Highland Park?"

Stern: "Yes, they will be going to Highland Park."

Davis: "And that's the school that..."

Stern: "That they have been attending."

Davis: "So in other words, we will not disrupt their education..."

Stern: "We will not disrupt..."

Davis: "...until this dispute is settled..."

Stern: "That's correct."

Davis: "Or until you get those dollars these children will be allowed to continue their education. Is that correct?"

Stern: "That's correct. That's what the Amendment says."

Davis: "Then we certainly do...We support your concurrence."

Speaker Keane: "The question is, 'Shall the House concur in Senate Amendment #1 to House Bill 2679?' All those in favor vote 'aye', all opposed vote 'no'. The voting is open. Have all voted who wish? Representative Lang votes 'aye'. Have all voted who wish? Representative Schoenberg votes 'aye'. Representative Schoenberg votes 'present'. No."

Schoenberg: "Yes. With my wife's law practice I am voting 'present'."

Speaker Keane: "Have all voted who wish? Mr. Clerk, take the record. On this there are 111 voting 'aye', none voting

'no', 3 voting 'present', and the House concurs in Senate Amendment #1 to House Bill 2679, and this Bill, having received the required Constitutional Majority, is hereby declared passed."

Source: Illinois House of Representatives, Spring 1992

HOUSE OF REPRESENTATIVES
SIXTEENTH LEGISLATURE, 1992
STATE OF HAWAII

H.B. NO. 2617

A BILL FOR AN ACT

RELATING TO THE TRANSFER OF CERTAIN PUBLIC SCHOOLS TO THE UNITED STATES DEPARTMENT OF DEFENSE PURSUANT TO PUBLIC LAW 81-874.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that section 6 of Public Law 81-874, relating to federal impact aid, requires the United States Department of Defense (USDOD) to make such arrangements as may be necessary to provide a free public education to all children who reside on USDOD facilities in those instances where there are no tax revenues available from a state or any of the state's political subdivisions to pay for the education of these children. Thus, in such cases in other states, the USDOD is obligated to operate schools for those children who reside on certain facilities.

In Hawaii, however, the board of education provides for the establishment, support, and control of; and formulates policy for and exercises control over; all public schools on USDOD facilities, even those attended exclusively or predominately by children residing on these facilities. The legislature finds that some parents of children who reside on USDOD facilities in Hawaii have publicly voiced their unhappiness with the quality of the State's public schools and system of public education in general. Consequently, the purpose of this Act is to enable

these parents and their children to experience the same quality of public schools and system of public education that they are entitled to under Public Law 81-874 when there are no tax revenues available from a state or any of the state's political subdivisions to pay for the education of their children.

SECTION 2. (a) The board of education, not later than June 30, 1993, shall transfer organizational and managerial control of all public educational institutions on United States Department of Defense facilities and all other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities, including any equipment or furniture appurtenant thereto or contained therein, to the United States Department of Defense pursuant to P.L. 81-874. The board of education, upon this Act taking effect, shall notify the Secretary of Defense in writing that no tax revenues of the State or any county shall be expended after July 1, 1994, for the establishment, support, or control of any public educational institutions on United States Department of Defense facilities and any other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities. The board of education shall identify those public educational institutions affected by

this Act and inform the Secretary of Defense that organizational and managerial control of these institutions, including any equipment or furniture appurtenant thereto or contained therein, shall be transferred not later than June 30, 1993, from the board of education to the United States Department of Defense.

(b) Beginning July 1, 1994:

(1) The board of education shall not provide for the establishment, support, or control of any public educational institutions on United States Department of Defense facilities or any other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities;

(2) Public funds shall not be appropriated for the support or benefit of any public educational institutions on United States Department of Defense facilities or any other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities; and

(3) The board of education shall not formulate policy for or exercise control over any public educational institutions on United States Department of Defense

facilities or any other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities.

(c) The State shall not provide for the repair and maintenance of any real properties, capital improvements, and equipment transferred to the United States Department of Defense by this Act; provided that title to these real properties and capital improvements shall be retained by the State and shall not be transferred to the United States Department of Defense.

(d) Notwithstanding any other law to the contrary, all fiscal savings realized by the transfer of all public educational institutions on United States Department of Defense facilities and all other public educational institutions that are attended predominately by students residing on United States Department of Defense facilities, to the United States Department of Defense shall accrue to the benefit of the department of education. These savings shall be used to reduce pupil-to-teacher ratios, increase instructional time, improve curriculum, increase teacher salaries, and fund other educational initiatives.

(e) With the exception of public educational institutions that are attended predominately by students residing on United States Department of Defense facilities, nothing in this Act

shall be construed to deny any person of a public education at a public educational institution located outside the confines of a United States Department of Defense facility.

(f) The board of education, not later than June 30, 1993, shall provide for the establishment of two school complexes to service areas in the proximity of military establishments. The first complex shall be established around Wheeler Intermediate School, which shall serve as the intermediate and high school for the Schofield Barracks/Wheeler Army Air Field area. The second complex shall be established around Radford High School, which shall serve as the intermediate and high school for the Pearl Harbor/Hickam Air Force Base area.

(g) The board of education, upon this Act taking effect, shall provide for the establishment, support, and control of an intermediate school facility in Mililani-mauka to replace Wheeler Intermediate School, which shall be transferred to the United States Department of Defense by this Act.

SECTION 3. No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service

position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 4. All records, equipment, machines, files, supplies, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of education relating to the public educational institutions transferred to the United States Department of Defense shall be transferred with the institutions to which they relate.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect on July 1, 1992.

INTRODUCED BY: _____

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Appendix K

Hearing Date: February 11, 1992
Committees: House Education
Intergovernmental Relations and
International Affairs

Department:	Education
Person Testifying:	Charles T. Toguchi, Superintendent
Title of Bill:	H.B. No. 2617, "Relating to the Transfer of Certain Public Schools to the United States Department of Defense Pursuant to Public Law 81-874."
Purpose of Bill:	To propose the transfer of organizational and managerial responsibility of all public educational institutions located on military bases in Hawaii and attended predominantly by students residing on military bases from the Board of Education to the United States Department of Defense. Additionally, the bill mandates the Board of Education to establish two school complexes to service areas in the proximity of military establishments.
Department's Position:	The Department recognizes that this bill attempts to deal creatively with some military parents' dissatisfaction with public education in Hawaii. Similar departmental attempts in the past, however, have not been successful. We now share some of our past concerns and experiences to assist you to identify the different issues that need to be considered if this bill is to be enacted into law. First, the bill may require a change in Hawaii's existing laws. Presently, the state is required to provide educational services for all children. Specifically, Section 1, Article X, of the State Constitution provides for "the establishment, support and control of a statewide system of public schools," and Section 298-9, Hawaii Revised Statutes, makes education compulsory for all children between ages six and 18, with few exceptions such as children enrolled in an appropriate alternative educational program or taught by a competent family tutor. This bill would differentiate military students from all other students. By segregating one segment of the school population, it may appear to be discriminatory. Second, while the United States Department of Defense operates dependent schools for military and civilian minor dependents of personnel stationed in foreign countries, federal laws generally leave the education of dependents of personnel stationed in the states and territories to local jurisdictions. According to Army Regulation 352-3, when the 81st Congress enacted Public Laws 874 and 815, its intent was that wherever possible, free public education for children living on federal property in the 50 states, Puerto Rico, Wake Island, Guam,

American Samoa, or the Virgin Islands would be provided by the regularly constituted state and local educational agencies. That is, children residing on federal property would be educated in schools operated and controlled by local public school systems in accordance with state laws and standards. If it was not possible for these children to attend a locally operated school off the federal property and it became necessary to operate a school on the federal property, then, every effort would be made to have it operated by the local educational agency. In return, the local educational agency would be furnished federal assistance in the form of Impact Aid.

Third, while there are special circumstances under which the military operates what are known as Section Six schools, according to military officials, the mood in Congress is to do away with these schools. Authorized by Public Law 81-874, the Army operates Section Six schools on nine military installations: Forts McClellan and Rucker, Alabama; Forts Benning and Stewart, Georgia; Forts Campbell and Knox, Kentucky; Fort Bragg, North Carolina; Fort Jackson, South Carolina; and West Point, New York. Originally, these schools were established for children living on federal property in areas where local education agencies were unable to provide suitable free education or where, by law, local education agencies were forbidden to expend funds for educating such children. Funding for Section Six schools are provided by the Department of Defense as a result of the Omnibus Reconciliation Act of FY 1982.

Fourth, with the collapse and dissolution of the Soviet Union and the enjoyment of unprecedented peacetime conditions, it seems likely that the federal defense budget will experience deep cuts. In this climate, Congress may not be willing to appropriate additional funds to establish Section Six schools on military bases in Hawaii.

Fifth, passage of this legislation may send the military community and the federal government a wrong message. The military presence is welcome in Hawaii. Indeed, many collaborative efforts between the military and the Department are ongoing.

Sixth, the Department will need to establish two school complexes to service areas in the proximity of military establishments as replacements for Wheeler and Aliamanu Intermediate Schools and Radford High School, as called for by the bill. Currently, however, there is no money in the capital improvement program budget for the design and/or construction of such facilities. Similarly, there are no plans for land acquisition for such facilities.

Some military parents' unhappiness with the public education system in Hawaii may not be resolved by transferring responsibility of the schools situated on military bases to the United States Department of Defense. Perhaps, it may be more advantageous to provide avenues for military parents' increased participation in their children's education. School/Community-

Based Management provides such an avenue. As each school located on a military base converts to School/Community-Based Management, it will require wide participation by knowledgeable parents and interested members of the military community on the school council. Together with school administrators and the faculty, they will decide on the course that education will take at a particular school. We believe parents' direct involvement in their children's education and the positive results of their involvement will contribute to a positive attitude toward public education in Hawaii.

Thank you for this opportunity to comment.

Source: Hawaii, DOE, Office of the Superintendent.

Appendix L

MILITARY AFFAIRS COUNCIL

The Chamber of Commerce of Hawaii / Established 1850

735 Bishop Street
Honolulu, Hawaii
96813

(808) 522-8821
Fax (808) 522-8836

Testimony of the Chamber of Commerce of Hawaii

Date: February 10, 1992

To: The House Committee on Education
Representative Rod Tam

From: The Military Affairs Council
Education Task Force

Re: House Bill 2617, Relating to the Transfer of Certain Public Schools to the United States Department of Defense pursuant to Public Law 81-874

Purpose: House Bill 2617 states that some military parents have publicly voiced their unhappiness with the quality of the states public schools. Therefore, schools on military bases, or those predominantly attended by military dependents, should be turned over to DoD as Section 6 schools under Public Law # 81-874.

Summary: The Military Affairs Council develops and implements strategies that maximize the economic benefits of Hawaii's Defense industry. Key initiatives include activities that to integrate servicemembers into the community fabric and increase their satisfaction with "Assignment Hawaii."

The Chamber of Commerce of Hawaii is against both HB 2617 and its companion, SB 2604

Policy: The Chamber of Commerce of Hawaii promotes excellence in all sectors of Hawaii's public school system. The committee advocates meaningful, long-term educational reform...and embraces the creative use of resources to enhance student learning and achievement. Further, the Chamber supports continuing expansion of efforts to address the concerns of military connected students in Hawaii's public schools.

•First, we'd question the legality of this measure, both in terms of state statutes and federal law.

•State Law - Section 6 schools, according to public law 81-874, may be created only if state agencies are not authorized to spend state/local tax revenues for the free public education of military children. This is clearly not the case in Hawaii, where Article X Section I of the Constitution clearly provides for a statewide system of public schools.

•Federal Law - Public law 81-874 says that wherever possible, free public education for military children assigned in the 50 states and Puerto Rico will be furnished by local education

agencies. We are not legal experts, but this would seem to rule out the creation of section 6 schools for Hawaii's military population.

•**Section 6 Schools - Background and Trends.** In certain areas decades ago, local agencies could not furnish suitable education, and Section 6 schools were established. No new Section 6 schools have been created in 20 years. Of the 106 schools on mainland bases, only 18 of them are Section 6 schools. Congress has expressed its preference to turn back section 6 schools to local education agencies. Ten have been transferred since 1989. Funding for Section 6 schools has been greatly limited. As DoD draws down, further budget reductions are expected.

•**On the topic of drawdowns. We respectfully point out that the military is the state's second largest industry.** We feel this is a perilous period of unprecedented cutbacks. It is dangerous to be sending a strong negative messages to Washington D.C. alluding to our educational problems. There are no sacred cows as we face two more base closure cycles in 1993 and 1995. Quality of life issues, among which we count public education, could easily carry weight in determining pullouts. Should this measure pass, it will go directly to the Secretary of Defense for resolution. The red flag will go to the top of the pole for all to see.

•The Military Affairs Council functions as a **solution oriented communications conduit** encouraging military families to get involved and help solve problems in public education. We spend much of our **effort trying to spark understanding between our military neighbors and our permanent citizenry, efforts that weave them into the community fabric** where they co-exist in harmony. We see them as adding to Hawaii's ethnic and cultural rainbow. HB 2617 creates an "us and them" mentality. We'd rather see the energy that's going into this negative effort put to work in other more positive areas, i.e. reforming the public school system, supporting School and Community Based Management, and asking our lawmakers to fund the DOE to levels that will adequately cover the costs of educating out children.

•**Costs are another matter. The state would lose $22.5 million in impact aid if** this measure is passed. While we agree that this amount in no way covers the full costs. On our annual business delegation trip to Washington, we would rather spend our time lobbying for increases in impact aid than fighting the unfavorable image this measure is bound to generate among our Pentagon contacts.

•In many of the schools recommended for turnover to DoD by this measure, **students from non-military families comprise high percentages of the student body.** At Radford High School, about 34 percent of the students enrolled are not military-connected. Where would they go to school if Radford became a DoD Section 6 School. If the state had to build new schools the expense could be prohibitive.

•**The entire community, including parents, business leaders, and education professionals, is concerned with the current sad state of our education system.** We discourage any focus that suggests that military parents are the only ones complaining about the education system. The governor called for reform in his State of the State. The Lt. Governor has, via his task force, been openly critical. Why spend precious time and resources isolating one complainant, simply because they are vocal and sometimes undiplomatic in their criticism? Finger pointing may only fuel ill will, serving no constructive purpose.

•**The measure calls for full transfer of equipment.** What will this do to such innovative programs such as the **Challenger Learning Center** at Barbers Point Elementary designed to spark enthusiasm about science among students? About **$300,000** has already gone into this program, and HB2622 relating to an appropriation for the center is pending in the House Committee on Education. This DOE/military/business partnership is a successful model as Hawaii embraces School/Community-Based Management initiatives.

Source: Military Affairs Council, The Chamber of Commerce of Hawaii, February 10, 1992

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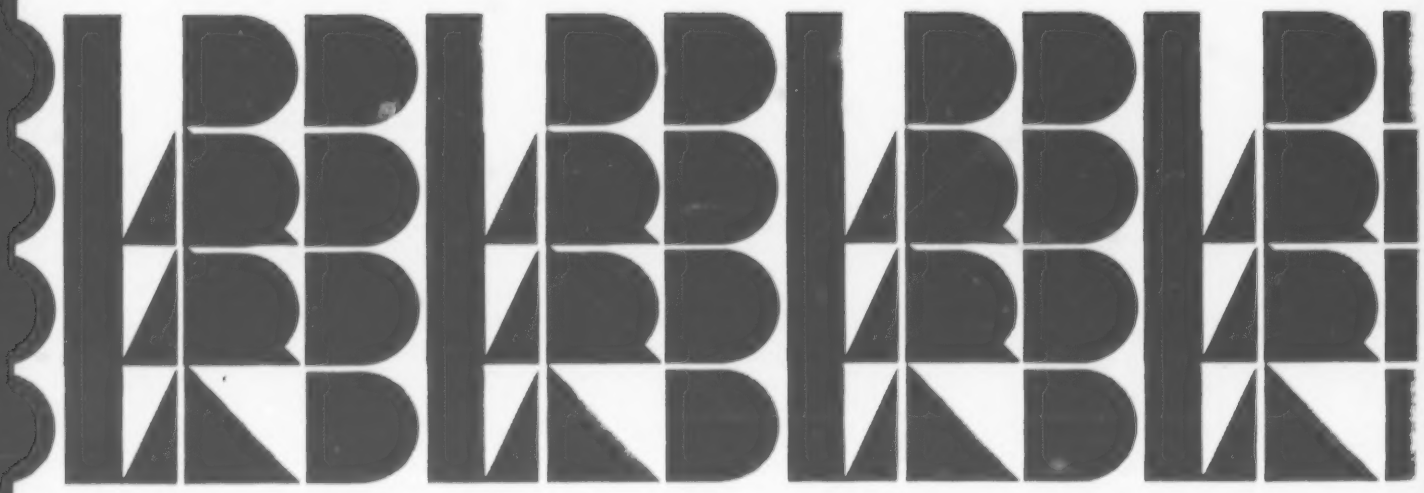
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